

No. 12144

United States
Court of Appeals
for the Ninth Circuit

HOFFMAN RADIO CORPORATION,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

In Two Volumes

VOLUME I.

(Pages 1 to 288, inclusive)

Petition to Review a Decision of The Tax Court
of the United States

FILED

MAR 28 1949

PAUL P. O'BRIEN,
CLERK

No. 12144

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

CLAUDE I. PARKER, Esq.,
JOHN B. MILLIKEN, Esq.,
RALPH KOHLMEIER, Esq.,
HARRISON HARKINS, Esq.,
L. A. LUCE, Esq.

For Respondent:

EARL C. CROUTER, Esq.

Docket No. 11683

HOFFMAN RADIO CORPORATION (Formerly
Mission Bell Radio Mfg. Co., Inc.),

Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1946

July 31—Petition received and filed. Taxpayer notified. Fee paid.

July 31—Copy of petition served on General Counsel.

Sept. 10—Answer filed by General Counsel.

Sept. 10—Request for hearing in Los Angeles, Calif. filed by General Counsel.

Sept. 16—Notice issued placing proceeding on Los Angeles, Calif. calendar. Service of answer and request made.

1947

Sept. 30—Hearing set Dec. 1, 1947 at Los Angeles, Calif.

Dec. 11, 12—Hearing had before Judge Disney on merits. Stipulation of facts filed. Briefs due 2/2/48—replies 3/1/48.

Dec. 30—Transcript of hearing of 12/11/47 filed.

Dec. 30—Transcript of hearing of 12/12/47 filed.

1948

Jan. 28—Brief filed by General Counsel.

Jan. 30—Brief filed by taxpayer—copy served.

Feb. 13—Entry of appearance of Harrison Harkins as counsel filed.

Feb. 25—Reply brief filed by taxpayer. 2/26/48 copy served.

Feb. 25—Reply brief filed by General Counsel.

June 29—Memorandum findings of fact and opinion rendered, Disney J. Decision will be entered under Rule 50. 6/30/48 copy served.

Aug. 25—Computation as to deficiency filed by General Counsel.

Aug. 30—Hearing set Sept. 22, 1948 on respondent's computation.

Sept. 20—Consent to settlement filed by taxpayer.

Sept. 22—Decision entered, Disney J. Div. 4.

Nov. 30—Petition for review by U. S. Court of Appeals for the Ninth Circuit filed by taxpayer.

Nov. 30—Proof of service filed by taxpayer.

Dec. 16—Statement of points and designation of contents of record filed by taxpayer with proof of service thereon.

1948

- Dec. 16—Motion for transmission of stipulation of facts together with exhibits 1 to 22 both inclusive, petitioner's exhibits 1 to 5 both inclusive and respondent exhibits A to G both inclusive, in their form filed by taxpayer. [1 *]
- Dec. 16—Motion that the exhibits which this Court orders to be transmitted in physical form be retained by the Clerk of The Tax Court until 15 days prior to argument and then upon request of either party be transmitted to the Clerk of the U. S. Court of Appeals for the Ninth Circuit, filed by General Counsel.
- Dec. 29—Stipulation that the entire record on appeal including all exhibits be printed and further stipulated that respondent's motion be denied filed.
- Dec. 29—Certified copy of an order from the Ninth Circuit extending the time to February 8, 1949 to prepare and transmit record filed.
- Dec. 29—Respondent's motion of 12/16/48 ordered denied.
- Dec. 29—Order that petitioner's exhibits 1 to 5 inclusive, and respondent's exhibits A to G inclusive, be transmitted by The Tax Court to the Clerk of the U. S. Court of Appeals for the Ninth Circuit as physical documents entered. [2]

* Page numbering appearing at foot of page of original certified Transcript of Record.

The Tax Court of the United States

Docket No. 11683

HOFFMAN RADIO CORPORATION (Formerly
Mission Bell Radio Mfg. Co., Inc.), 3430 South
Hill Street, Los Angeles 7, California,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:PAK) dated May 9, 1946, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation with principal office at 3430 South Hill Street, Los Angeles 7, California. The return for the year here involved was filed with the Collector for the Sixth District of California. [3]

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to petitioner on May 9, 1946.

3. The taxes in controversy are declared value excess-profits tax, income tax, and excess profits tax for the calendar year 1943 in the amount of \$55,945.35.

4. The determination of tax set forth is said notice of deficiency is based upon the following errors:

(a) The respondent erred in determining deficiencies against petitioner for the calendar year 1943 with respect to declared value excess-profits tax, income tax, and excess profits tax in the respective amounts of \$1,334.34, \$3,279.24, and \$51,331.77.

(b) The respondent erred in disallowing a portion of the salaries and other compensation paid for the calendar year 1943 to the officers of petitioner for personal services actually rendered.

(c) The respondent erred in that he disallowed as a deduction, representing salary and other compensation paid by petitioner, in computing the net taxable income of petitioner for the calendar year 1943 the sum of \$48,784.28.

5. The facts upon which petitioner relies as the [4] basis of this proceeding are as follows:

(a) Petitioner, Hoffman Radio Corporation, represents a change in name only during the year 1943 of Mission Bell Radio Mfg. Co., Inc. Petitioner is a California corporation, incorporated on June 20, 1932, and is engaged now and was engaged during the year 1943 in the radio and electronic manufacturing business. During the year 1941 Mr. H. L. Hoffman became interested in the affairs of Mission Bell Radio Mfg. Co., Inc.; and upon investigation reached the conclusion that the corporation should, with able management and changed business policies, operate and conduct a profitable business. He and his associates worked out a deal whereby they might acquire the stock of the corporation. The corporation on December 4, 1941

entered into an employment contract with Mr. H. L. Hoffman whereby he would become president and general manager of the corporation, and agreed to pay him a fixed salary for his services and in addition thereto an amount equal to 3% of all of the gross sales of the corporation.

The corporation also authorized Mr. H. L. Hoffman to secure the services of a competent and well recognized radio engineer. Mr. Hoffman canvassed the entire [5] field and reached the conclusion after investigation that Mr. W. S. Harmon was a person who possessed such qualifications and who would render the highly specialized technical service which would be required for a corporation manufacturing radios and electronic equipment. The petitioner upon the recommendation of Mr. H. L. Hoffman entered into an employment contract with Mr. W. S. Harmon, agreeing to pay Mr. Harmon a weekly salary plus an additional compensation measured by 1% of the gross sales of the corporation.

During the calendar year 1943 Mr. H. L. Hoffman rendered his undivided time and attention to the affairs of petitioner and, as a result of the services rendered to petitioner, caused its business to be highly successful and to gain the prestige as one of the leading radio and electronic manufacturing corporations of America. Mr. W. S. Harmon rendered like services to petitioner during the calendar year 1943.

The petitioner pursuant to and in conformity with the contracts entered into with Mr. H. L.

Hoffman and Mr. W. S. Harmon paid to its general manager, Mr. H. L. Hoffman, for the calendar year 1943 compensation in the sum of \$63,613.20, representing an amount on the account of salary in the amount of \$8,800.00 and [6] contingent compensation in the amount of \$54,813.20; and paid for the calendar year 1943 to Mr. W. S. Harmon the sum of \$22,171.08, representing an amount on account of salary in the sum of \$3,900.00 and contingent compensation in the amount of \$18,271.08. The respondent in the audit of the tax return of petitioner for the calendar year 1943 determined that \$25,000.00 represented a reasonable compensation of Mr. H. L. Hoffman and disallowed the compensation paid to Mr. Hoffman in the sum of \$38,613.20; and determined that a reasonable compensation for Mr. W. S. Harmon should be in the sum of \$12,000.00 and disallowed the compensation paid to Mr. Harmon in the amount of \$10,171.08.

The respondent erred in disallowing any portion of the sums paid for the calendar year 1943 to Mr. H. L. Hoffman and Mr. W. S. Harmon, and the personal services actually rendered by each of the two persons in question was reasonable compensation for the valuable services rendered by each of them to petitioner for the calendar year 1943.

Wherefore, the petitioner prays that this Court may hear this proceeding and determine that petitioner is not [7] liable for the deficiencies in declared value excess-profits tax, income tax, and

excess profits tax as proposed by the respondent for the calendar year 1943, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ CLAUDE I. PARKER,

/s/ JOHN B. MILLIKEN,

/s/ RALPH KOHLMEIER,

Counsel for Petitioner.

Of Counsel:

/s/ L. A. LUCE.

[8]

State of California,
County of Los Angeles—ss.

R. A. Yarcho, being duly sworn, says that he is the secretary of the petitioner and that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

R. A. YARCHO.

Subscribed and sworn to before me this 25th day of July, 1946.

M. L. BOSS,

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Oct. 21, 1948. [9]

EXHIBIT A

TREASURY DEPARTMENT

Internal Revenue Service

417 South Hill Street

Los Angeles 13, California

Office of Internal Revenue Agent in Charge

Los Angeles Division

May 9, 1946

LA:IT:90D:PAK

Hoffman Radio Corporation

(Formerly Mission Bell Radio Mfg. Co., Inc.)

3430 South Hill Street

Los Angeles 7, California

Gentlemen:

You are advised that the determination of your declared value excess-profits tax liability for the taxable years ended December 31, 1942 and 1943, discloses an overassessment of \$10.00 for the taxable year ended December 31, 1942, and a deficiency of \$1,334.34 for the taxable year ended December 31, 1943, and that the determination of your income tax liability for the taxable years mentioned discloses an overassessment of \$38.88 for the taxable year ended December 31, 1942, and a deficiency of \$3,279.24 for the taxable year ended December 31, 1943, and that the determination of your excess profits tax liability for the taxable year ended December 31, 1943, discloses a deficiency of \$51,331.77, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner,

By GEORGE D. MARTIN,
Internal Revenue Agent in
Charge.

Enclosures: Statement, Form of Waiver, Forms
843. [10]

Statement

Tax Liability for the Taxable Years Ended
December 31, 1942 and 1943

Year	Liability Declared	Assessed Value	Overassessment Excess-Profits Tax	Deficiency
1942	\$ 67.78	\$ 77.78	\$10.00	
1943	1,334.34	0.00	0.00	\$1,334.34
Totals	\$1,402.12	\$ 77.78	\$10.00	\$1,334.34
		Income Tax		
1942	\$2,318.99	\$2,357.87	\$38.88	
1943	3,279.24	0.00	0.00	\$3,279.24
Totals	\$5,598.23	\$2,357.87	\$38.88	\$3,279.24
		Excess Profits Tax		
1943	\$171,827.06	\$120,495.29		\$51,331.77

In making this determination of your tax liability, careful consideration has been given to the report of examination dated April 19, 1945, to your protest dated July 19, 1945, and to the statements made at conferences held.

The overassessments shown herein will be made the subject of certificates of overassessment which will reach you in due course through the office of the collector of internal revenue for your district, and will be applied by that official in accordance with section 322(a) of the Internal Revenue Code, provided that you fully protect yourself against the running of the statute of limitations with respect to the apparent overassessments referred to in this letter, by filing with the collector of internal revenue for your district, claims for refund on form 843, copies of which were enclosed, the bases of which may be as set forth herein. [11]

A copy of this letter and statement has been mailed to your representative, Mr. John B. Milliken, 650 South Spring Street, Los Angeles 14, California, in accordance with the authorization contained in the power of attorney executed by you.

Adjustments to Net Income
Taxable Year Ended December 31, 1942

Net income as disclosed by return.....		\$ 9,178.52
Unallowable deductions:		
(a) Franchise tax disallowed	\$2,000.00	
(b) Personal property taxes disallowed....	248.50	2,248.50
Total		\$11,427.02
Additional deduction:		
(c) Capital stock tax		2,400.00
Net income adjusted		\$ 9,027.02

Explanation of Adjustments

(a) It has been determined that the correct deduction for franchise tax, under section 23(c) of the Internal Revenue Code, is \$25.00 instead of the amount, \$2,025.00, claimed in your return, or a decrease of \$2,000.00.

(b) It has been determined that the correct deduction for personal property taxes, under section 23(c) of the Internal Revenue Code, is \$580.95 instead of the amount, \$829.45, claimed in your return, or a decrease of \$248.50.

(c) An additional deduction is allowed for capital stock tax in the amount of \$2,400.00.

Computation of Declared Value Excess-Profit Tax
 Taxable Year Ended December 31, 1942

Net income adjusted	\$9,027.02
Less: 10% of \$80,000.00 value of Capital stock as declared in capital stock tax return for the year ended June 30, 1942	8,000.00
<hr/>	
Net income subject to declared value excess-profits tax.....	\$1,027.02
Declared value excess-profits tax: 6.6% of \$1,027.02.....	\$ 67.78
Correct declared value excess profits tax liability.....	\$ 67.78
Declared value excess-profits tax assessed:	
Original, Account No. 359916	77.78
<hr/>	
Overassessment of declared value excess-profits tax.....	\$ 10.00

Computation of Income Tax

Taxable Year Ended December 31, 1942

Net income adjusted	\$9,027.02
Less: Declared value excess-profits tax.....	67.78
<hr/>	
Normal-tax net income	\$8,959.24
Surtax net income	\$8,959.24
Income tax:	
Normal tax:	
15% of \$5,000.00.....	\$750.00
17% of \$3,959.24.....	673.07
	\$1,423.07
<hr/>	
Surtax:	
10% of \$8,959.24.....	895.92
<hr/>	
Correct income tax liability	\$2,318.99
Income tax assessed: Original, Account No. 359916.....	2,357.87
<hr/>	
Overassessment of income tax	\$ 38.88

Adjustments to Net Income
Taxable Year Ended December 31, 1943

Net income as disclosed by return.....		\$211,857.16
Unallowable deductions:		
(a) Contribution to profit sharing fund disallowed	\$ 7,522.12	
(b) Cost of camera disallowed.....	325.00	
(c) Capital stock tax disallowed.....	2,500.00	
(d) Franchise tax disallowed	8,000.00	
(e) Real estate taxes disallowed.....	472.23	
(f) Excessive compensation of officers disallowed	48,784.28	67,603.63
Total		\$279,460.79
Additional deductions:		
(g) Depreciation on camera	\$ 5.42	
(h) Amortization of emergency facilities	6,924.89	
(i) Personal property taxes	1,121.26	
(j) Excessive profits on war contracts....	51,192.00	59,243.57
Net income adjusted		\$220,217.22

Explanation of Adjustments

(a) It has been determined that the deduction claimed in the amount of \$7,522.12, representing amounts set aside pursuant to a profit sharing agreement, does not represent a proper deduction under section 23 of the Internal Revenue Code and is disallowed.

(b) and (g) Included in the deduction claimed for employee relationship expense is the amount of \$325.00, representing the cost of a camera, which is disallowed because it represents a capital expenditure. A deduction in the amount of \$5.42 is allowed representing allowable depreciation on the camera from date of acquisition, November 10, 1943, based upon a life of 10 years.

(c) It has been determined that the correct deduction for capital stock tax, under section 23(c) of the Internal Revenue Code, is \$7,500.00 instead of the amount \$10,000.00, claimed in your return, or a decrease of \$2,500.00. [14]

(d) It has been determined that the correct deduction for franchise tax, under section 23(c) of the Internal Revenue Code, is \$1,539.51 instead of the amount \$9,539.51, claimed in your return, or a decrease of \$8,000.00.

(e) The deduction claimed for real estate taxes in the amount of \$472.23 is disallowed as not representing a proper deduction under section 23(c) of the Internal Revenue Code, this amount representing additional cost of land purchased June 18, 1943.

(f) On your return you deducted \$63,613.20 on account of a salary of \$8,800.00 and a bonus of \$54,-813.20 paid to your President and General Manager, H. L. Hoffman. It is determined that \$25,000.00 constitutes a reasonable compensation for services rendered by H. L. Hoffman, and the excessive payment in the amount of \$38,613.20 is disallowed as a deduction in computing your net taxable income for the year 1943 under the provisions of section 23(a)(1) of the Internal Revenue Code.

On your return you deducted \$22,171.08 on account of a salary of \$3,900.00 and a bonus of \$18,-271.08 paid to your Vice-President and Chief Engineer, W. S. Harmon. It is determined that \$12,-000.00 constitutes a reasonable compensation for services rendered by W. S. Harmon, and the excessive payment in the amount of \$10,171.08 is dis-

allowed as a deduction in computing your net taxable income for the year 1943 under the provisions of section 23(a)(1) of the Internal Revenue Code.

(h) An additional deduction is allowed for amortization of emergency facilities in the amount of \$6,924.89 in accordance with section 124 of the Internal Revenue Code, including amortization for six months with respect to the amount disallowed under adjustment (e).

(i) An additional deduction is allowed for personal property taxes in the amount of \$1,121.26.

(j) The amount of excessive profits on war contracts, determined pursuant to renegotiation of such contracts, in the amount of \$51,192.00 is eliminated from taxable income in accordance with section 3806(a) of the Internal Revenue Code. [15]

Computation of Declared Value Excess-Profits Tax

Taxable Year Ended December 31, 1943

Net income adjusted	\$220,217.22
Less: 10% of \$2,000,000.00, value of capital stock as declared in capital stock tax return for the year ended June 30, 1943	200,000.00
	<hr/>
Net income subject to declared value excess-profits tax....	\$ 20,217.22
Declared value excess-profits tax 6.6% of \$20,217.22....	\$ 1,334.34
Correct declared value excess-profits tax liability.....	\$ 1,334.34
Declared value excess-profits tax assessed:	
Original, Account No. 412153.....	\$782.57
Less: Credit allowed—Section 3806(b) I.R.C.	782.57
	<hr/>
Deficiency of declared value excess-profits.....	\$ 1,334.34

Adjustments to Excess Profits Net Income
Taxable Year Ended December 31, 1943

Excess profits net income as disclosed by return.....	\$211,074.59	
Unallowable deductions:		
(a) Contribution to profit sharing fund disallowed	\$ 7,522.12	
(b) Cost of camera disallowed.....	325.00	
(c) Capital stock tax disallowed.....	2,500.00	
(d) Franchise tax disallowed	8,000.00	
(e) Real Estate taxes disallowed.....	472.23	
(f) Excessive compensation of officers disallowed	48,784.28	67,603.63
		<hr/>
Total		\$278,678.22
Additional deductions:		
(g) Depreciation of camera	\$ 5.42	
(h) Amortization of emergency facilities	6,924.89	
(i) Personal property taxes	1,121.26	
(j) Excessive profits on war contracts....	51,192.00	
(k) Declared value excess-profits tax.....	551.77	\$ 59,795.34
		<hr/>
Excess profits tax income adjusted.....		\$218,882.88

Explanation of Adjustments

(a), (b), (c), (d), (e), (f), (g), (h), (i), and (j). These adjustments are the same as made to net income and previously explained.

(k) It has been determined that the correct deduction for declared value excess-profits tax, under section 23(c) of the Internal Revenue Code, is \$1,334.34 instead of the amount, \$782.57, claimed in your return, or an increase of \$551.77.

Adjustment to Unused Excess Profits Credit
Carryover

Taxable Year Ended December 31, 1943

In lieu of an unused excess profits credit carryover from the taxable year December 31, 1941,

claimed in the amount of \$2,354.37, it has been determined that the correct amount of such unused excess profits credit carryover is \$2,939.31, or an increase of \$584.94. This increase is due to an increase of \$443.44 in the amount of unused excess profits credit for the taxable year December 31, 1940 (carried forward to 1942) and a decrease of \$141.50 of excess profits net income for the taxable year December 31, 1942.

Computation of Excess Profits Tax

Taxable Year Ended December 31, 1943

Excess profits net income			\$218,882.88
Less: Specific exemption	\$5,000.00		
Excess profits credit (as claimed in return)	4,576.37		
Unused excess profits credit carryover.....	2,939.31	12,515.68	
		<hr/>	
Adjusted excess profits net income.....			\$206,367.20
(a) 90% of \$206,367.20			\$185,730.48
Surtax net income computed without reference to the credit provided in section 26(e).....			\$218,882.88
80% of \$218,882.88			175,106.30
Less: Income tax			3,279.24
		<hr/>	
(b) Balance			\$171,827.06
Correct excess profits tax liability (lesser of items (a) and (b)).....			\$171,827.06
Excess profits tax assessed:			
Original, Account No. 400816	\$168,859.67		
Less: Credit allowed Section 3806(b)			
I. R. C.	\$43,448.84		
Credit allowed Section			
124(k) I. R. C.....	4,915.54	48,364.38	\$120,495.29
		<hr/>	
Deficiency of excess profits tax.....			\$ 51,331.77

Computation of Income Tax

Taxable Year Ended December 31, 1943

Net income adjusted		\$220,217.22
Less: Income subject to excess profits tax..	\$206,367.20	
Declared value excess-profits tax.....	1,334.34	207,701.54
		<hr/>
Normal-tax net income		\$ 12,515.68
Surtax net income		\$ 12,515.68
Income tax:		
Normal tax:		
13% of \$5,000.00.....	\$ 750.00	
17% of \$7,515.68.....	1,277.67	\$ 2,027.67
		<hr/>
Surtax: 10% of \$12,515.68		\$ 1,251.57
		<hr/>
Correct income tax liability.....		\$ 3,279.24
Income tax assessed: Original, Account No. 412153.....		0.00
		<hr/>
Deficiency of income tax		\$ 3,279.24

[Endorsed]: T.C.U.S. Filed July 31, 1946. [18]

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are declared value excess-profits tax, income tax, and excess-profits tax for the calendar year 1943; denies the remainder of the allegations contained in paragraph 3 of the petition. [19]

4 (a) to (c), inclusive. Denies the allegations of error contained in subparagraphs (a) to (c), inclusive, of paragraph 4 of the petition.

5 (a). Admits the allegations contained in the first two sentences of subparagraph (a) of paragraph 5 of the petition; denies the remainder of the allegations contained in said subparagraph, and all subdivisions thereof.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

EARL C. CROUTER,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Sept. 10, 1946. [20]

[Title of Tax Court and Cause.]

John B. Milliken, Esq., and Harrison Harkins, Esq., for the petitioner.

Earl C. Crouter, Esq., for the respondent.

MEMORANDUM FINDINGS OF FACT
AND OPINION

Disney, Judge: This proceeding involves Federal income tax, declared value excess profits tax and excess profits tax deficiencies for 1943 in the amounts of \$3,279.24, \$1,334.34, and \$51,331.77, respectively.

The Commissioner allowed deductions as reasonable compensation for services rendered in the amount of \$25,000 for H. L. Hoffman, petitioner's president and general manager, and \$12,000 for W. S. Harmon, petitioner's vice-president and chief engineer, instead of \$63,613.20 and \$22,171.08, representing salaries and bonuses, as claimed on petitioner's tax return. [21]

The only question presented to this Court for determination is what is a reasonable allowance for salary or other compensation for the personal services actually rendered to the petitioner by each of the officers above named.

A stipulation of facts was filed. We adopt same by reference and find the facts therein set forth. Such part thereof as it is considered necessary to

set forth is included with other facts found from evidence adduced in our

FINDINGS OF FACT

Petitioner, a California corporation, was incorporated on June 30, 1932, under the name of Mission Bell Radio Mfg. Co., Inc. In 1943, without otherwise altering the continuity of its corporate existence, its name was changed to Hoffman Radio Corporation. The tax returns for the year 1943 involved herein were filed with the collector of internal revenue for the sixth district of California.

During the period from 1932 to 1942 petitioner was chiefly engaged in the business of manufacturing commercial radio receiving sets. A general order of the War Production Board, issued March 7, 1942, and effective April 23, 1942, restricted and finally prohibited the commercial manufacture of radio receivers and phonographs. During 1942 petitioner was engaged in the business of manufacturing radio and electronic equipment. Its percentage of sales of commercial radios, sub-contracts on Government orders, and experimental, as compared with the total sales that year was 31.61 per cent, 65.24 per cent, and .15 per cent, respectively. Its 1943 sales chiefly related to Government contracts and orders (99.96 per cent). The remaining part was commercial sales (.04 per cent). [22]

From the date of incorporation to 1941, inclusive, petitioner's operation was as follows: It sustained net losses in 1932, 1933, 1939, 1940 and 1941; it realized net income in the years 1934 to 1938. Comparative profit and loss statements for the years 1940 through 1943 reflect the following:

	1940	1941	1942	1943
Net Sales	\$121,812.16	\$ 29,763.82	\$351,950.62	\$ 1,787,850.14
Cost of Sales.....	99,677.60	30,930.30	259,365.15	1,354,803.95
Gross Profit on Sales.....	\$ 22,134.56	(\$ 1,166.48)	\$ 92,585.47	\$ 433,046.19
Other Income	839.81	3,769.74	1,448.57	.....
Total Income	\$ 22,974.57	\$ 2,603.26	\$ 94,034.04	\$ 433,046.19
Expenses (other than compensation of President and Vice President)	\$ 24,665.87	\$ 15,709.80	\$ 31,712.28	\$ 175,828.97
Net Income before compensation of Officers and before Federal Taxes	(\$ 1,691.50)	(\$ 13,106.54)	\$ 62,321.76	\$ 257,217.22
Compensation of President and Vice President.....	\$ 10,200.00	\$ 2,364.00	\$ 25,932.70	\$ 85,784.28*
Net Income before Federal Taxes.....	(\$11,891.50)	(\$ 15,470.54)	\$ 36,389.06	\$ 171,432.94*
Federal Income and Excess Profits Taxes.....	None	None	\$ 2,386.77	\$ 123,759.67*
Net Income after Taxes.....	(\$11,891.50)	(\$ 15,470.54)	\$ 34,002.29	\$ 47,673.27*
Dividends Paid	None	None	None	None

* Computation does not reflect the adjustment and tax deficiency on the deduction disallowance at issue herein.

Hoffman Radio Corporation vs.

Comparative balance sheets for the years 1941 through 1943 reflect the following:

	January 1 1941	December 31 1941	December 31 1942	December 31 1943
ASSETS				
Current Assets				
Cash	\$ 785.14	\$ 3,140.41	\$ 11,830.51	\$ 62,628.22
U. S. Treasury Notes.....	.....	.....	.....	50,000.00
Notes and Accounts Receivable.....	5,682.97	667.72	61,820.94	354,264.36
Inventories	13,930.60	9,128.53	52,618.16	242,061.96
Development Advance Receivable .....	.....	.....	.....	84,502.61
	<hr/>	<hr/>	<hr/>	<hr/>
	\$20,398.71	\$12,936.66	\$126,269.61	\$793,457.15
Fixed Assets				
Land, Buildings, and Machinery.....	\$ 2,718.65	\$ 2,456.65	\$ 21,062.89	\$ 84,434.59
Reserve for Depreciation.....	2,018.46	2,275.71	3,924.54	20,441.69
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Other Assets	\$ 700.19	\$ 180.94	\$ 17,138.35	\$ 63,992.90
	\$20,274.74	\$ 5,088.77	\$ 4,213.99	\$ 20,098.64
	<hr/>	<hr/>	<hr/>	<hr/>
Total Assets.....	\$41,373.64	\$18,206.37	\$147,621.95	\$877,548.69

LIABILITIES AND CAPITAL

Current Liabilities

	January 1 1941	December 31 1941	December 31 1942	December 31 1943
Accounts Payable	\$ 7,685.91	\$13,064.26	\$ 71,414.58	\$ 97,122.60
Notes Payable .....	.....	1,000.00	30,000.00	233,448.17
Accrued Expenses	1,199.27	1,254.83	9,317.80	151,935.40
Reserve for Federal Taxes.....	.....	.....	.....	137,146.38*
Reserve for Renegotiation.....	.....	.....	.....	51,192.00

Deferred Liabilities

Mortgage Payable	\$ 8,885.18	\$15,319.09	\$110,732.38	\$670,844.55
Reserve for Contract Guarantee.....	.....	.....	.....	\$ 27,000.00
				22,641.30

Capital Accounts

	\$	\$	\$	\$
Capital Stock—Preferred.....	.....	.....	.....	\$ 72,500.00
Common	41,300.00	41,300.00	41,300.00	41,300.00
Surplus—Paid in	10,373.71	10,373.71	10,373.71	10,373.71
Earned	(19,185.25)	(48,786.43)	(14,784.14)	32,889.13*

Total Liabilities and Capital.....	41,373.64	\$18,206.37	\$147,621.95	\$877,548.69
		\$ 2,887.28	\$ 36,889.57	\$157,062.84
	\$32,488.46			

* Without adjustment for the tax deficiencies in dispute herein.

H. L. Hoffman became interested in acquiring control of petitioner in July of 1941. He made a thorough investigation of its affairs and was conversant with its history, physical and financial situation, as well as its status and reputation in the radio manufacturing industry. In October or November of 1941, Hoffman interested G. Gifford Davidge and Walter D. Douglas in a plan to acquire stock and management control of petitioner. Davidge and Douglas were conversant with the history, physical and financial situation of the petitioner, and its status and reputation in the radio manufacturing industry. Both Davidge and Douglas were experienced in radio and electrical business. Douglas also had experience in the statistical and financial phases of the security investment business. Both Davidge and Douglas were men of means, each with a net worth of approximately \$750,000. Hoffman was not and is not now related to Douglas or Davidge, nor was he acquainted with them when the parties commenced the negotiations which culminated in their acquisition of stock and management control of the petitioner.

Hoffman, Davidge and Douglas reached an agreement, prior to the drafting and the execution of the formal documents involved, concerning the terms and procedures for acquiring stock and management control of petitioner. The formal documents embodying and effectuating the agreements were drafted at one time by Davidge's attorney. In brief, the preliminary agreement was that Hoffman was to enter into contracts to purchase, on an installment basis, all of the stock of petitioner; Hoffman

was to hold the stock interest so acquired as trustee for himself, Davidge and Douglas, and their respective beneficial stock interests were to be 50 per cent, 25 per cent and 25 per cent; each of the parties was to become a director and officer of petitioner; Hoffman was to be employed as general manager at a fixed salary to be later agreed upon, [25] plus an incentive compensation in a monthly amount equal to 3 per cent of the monthly gross sales; Hoffman, Davidge and Douglas were to loan cash to the petitioner in the amounts of \$2,000, \$4,000 and \$4,000, respectively, and the contributors of a majority in amount of the money advanced were to be entitled to determine what was to be done, or not done, in respect to the advances; and if at any time any two of the parties should determine that the operations of the petitioner could not be continued successfully, Hoffman was to make no further payments under the stock purchase contracts and the trust relative to the stock interest was to terminate.

Prior to December 1, 1941, petitioner's stockholders were as follows:

H. G. Schmieter, 110 shares.

Franklyn & Helen E. Warner, 193 shares.

P. L. Fleming, 110 shares.

Under the provisions of separate written agreements of December 1, 1941, and December 4, 1941, Hoffman agreed to purchase all of the 413 shares of the petitioner's outstanding stock previously belonging to such former stockholders, for the total sum of \$11,755, to be paid in installments. The agreement of December 1, 1941, between Hoffman

and H. G. Schmieter, provided in part that pending the making of payments for the stock, within 36 months, Hoffman should be employed as general manager and should be paid 3 per cent of the gross sales of all merchandise sold by petitioner, as a partial consideration for such services. The agreement had a provision as to dividends, as follows:

Hoffman shall in any event, at all times when he is not in default under the terms and conditions of this agreement, be entitled to receive, have and take all dividends which may be properly declared upon said stock; provided that in the event he is in default, his right to such dividends shall ipso facto cease and terminate. [26].

The agreement also provided that new certificates for the 110 shares of stock should be issued to Hoffman, then endorsed to Schmieter as collateral security for the payment. The agreement of December 4, 1941, between Hoffman and Franklyn and Helen E. Warner, similarly provided in part that pending the making of payments for the stock, within 36 months, Hoffman should be employed as general manager and should be paid 3 per cent of the gross sales for the preceding month, and in addition such an amount as may from time to time be agreed upon between Hoffman and the petitioner. The note which was a part of this agreement provided that the 193 shares of stock should be assigned, pledged and transferred to the Warners as security for the payment. The note also expressly reserved to Hoffman "all voting rights to the stock so assigned, pledged and transferred, and to all dividends paid thereon." The third agreement,

dated December 4, 1941, was between Hoffman and P. L. Fleming, relating to the purchase of 110 shares of the stock of petitioner by Hoffman and payment within 36 months. It contained the provision that Hoffman should be employed as general manager and should be paid 3 per cent of the gross sales for the preceding month, and in addition such an amount as may from time to time be agreed upon between Hoffman and the petitioner. It also contained a provision with respect to dividends as follows:

* * * Fleming further agrees, expressly for the benefit of said company as well as for the benefit of Hoffman, that he will not take any action to enforce his claim against said company for salary earned and unpaid prior to January 15, 1943, and that on January 15, 1943, he will agree to a further extension of the time of payment of such claim unless on or prior to January 15, 1943, said company is in a position to pay dividends on its stock aggregating the sum of Fifteen Hundred Dollars (\$1500.00), it being expressly agreed that, for the purpose of determining whether or not said company is in a position to pay such dividends, salaries paid to officers and/or employees of said company who during said year have been stockholders of said company shall be taken to aggregate not more than Twelve Thousand Dollars (\$12,000.00). [27] The note which was a part of this agreement provided that the 110 shares of stock should be assigned, pledged and transferred to Fleming as security for the payment. The note also expressly reserved to Hoffman "all voting

rights to the stock so assigned, pledged and transferred, and to all dividends paid thereon.”

After Hoffman acquired the stock from Schmie-ter, he became a director of petitioner. At a director's meeting on December 4, 1941, the directors being Hoffman, Fleming and one M. E. Penney, Hoffman was employed as general manager of petitioner. The terms of the agreement were set forth in an instrument dated December 4, 1941. The agreement provided, in general, for payment to Hoffman of 3 per cent of all gross sales for each preceding month, as partial payment for his services as general manager. Additional compensation was to be “such other amounts as may hereafter from time to time be mutually agreed upon.” The agreement was for 36 months, but terminable by Hoffman after February 28, 1942. After the approval of Hoffman's employment contract as general manager, Hoffman advised the Board that he had negotiations pending to acquire the remaining outstanding stock of the petitioner and thereupon requested the Board to adjourn and recess for 30 minutes, which request was granted. During the recess Hoffman consummated the transactions to acquire the remaining outstanding stock of petitioner. The meeting of the Board reconvened and upon proper motions, duly made, Davidge and Douglas were substituted as directors in the place of Fleming and Penney.

On December 9, 1941, Hoffman, Davidge and Douglas executed a contract setting forth the agreement of the parties to advance monies to the petitioner (\$2,000 from Hoffman and \$4,000 from

each of the others); that such parties shall be directors of petitioner; that Hoffman shall be president and general [28] manager and receive 3 per cent of the gross sales as part compensation for services; that Davidge shall be vice president, and that Douglas shall be secretary and treasurer. The contract also provided that all rights which Hoffman had in the stock, above mentioned, should be "held by him in trust for the benefit of himself, Davidge and Douglas * * *." The contract further provided that when and if Hoffman became owner of the stock, 50 per cent should belong to him, 25 per cent should belong to Davidge, and 25 per cent should belong to Douglas.

When Hoffman, Davidge and Douglas acquired their interests in the petitioner, as stated above, the main asset of the corporation was a license from the Radio Corporation of America, and one of the stipulations of the license was that it could not be sold or transferred. Consequently, it was necessary to rehabilitate the old company.

Petitioner, early in 1942, employed Walter S. Harmon, on a basis shown by letter of March 10, 1942, as follows:

Confirming our conversation and verbal agreement in January, this letter is to confirm our arrangement at that time. Mission Bell Radio Mfg. Co., Inc., will pay you a salary of Seventy-five Dollars (\$75.00) per week.

In addition to the above, we will pay you an overtime of one per cent (1%) on the gross volume

of business done by the Company after excise tax and other applicable taxes are deducted.

Payment of this bonus will be made annually and semi-annually if agreeable to both parties.

This arrangement will be applicable to the year 1942 and renewable upon the consent of both parties.

Later he was made vice-president.

Petitioner, by action of a majority of the board of directors (Hoffman and Douglas), on May 15, 1942, approved the above-mentioned salary and bonus [29] arrangement with Harmon. Minutes of this date also refer to business and authorize salaries as follows:

It was brought before the Board of Directors by Mr. Hoffman that contracts on hand with Bendix Aviation, Ltd., amounted to approximately \$300,000 and that prospects for future military work seemed to be promising. It was also pointed out that our present quarters were not adequate for the volume and type of work that we are doing, and they also do not meet the requirements of the Signal Corps.

* * * *

Salaries for executives of the Company were discussed. It was pointed out by Mr. Hoffman that it would be necessary to terminate his connection with Peerless Electrical Products Company because of his duties at Mission Bell Radio Mfg. Co., and thereby eliminate this source of income. To com-

pensate for this, motion was duly made, seconded and carried that his salary would be set at \$800.00 per month.

Motion was made by Mr. Hoffman that the salary of Mr. Walter D. Douglas be set up on the books at \$350.00 per month. Motion was duly seconded and carried.

On December 16, 1942, petitioner and Harmon renewed the arrangement of March 10, 1942, with respect to "salary and override commission of one per cent" for the year 1943.

On December 4, 1941, when Hoffman became general manager of petitioner, its physical plant and equipment were small and obsolete. It had no productive staff and its employees consisted of its then president, an office girl and a stock boy. The growth of petitioner's employee organization was as follows:

Year	Highest Number of Employees
1941	3
1942	107
1943	297
1944	351

In terms of plant expansion, petitioner progressed from its 1941 rented quarters encompassing 7,500 square feet, to a plant area of 15,000 square feet in 1942, and 40,000 square feet in 1943, including a one-story brick building [30] encompassing 18,500 square feet, which was purchased by petitioner for approximately \$55,000. (The \$25,000 down payment

was made from funds contributed by Hoffman, Davidge and Douglas.)

Salary and bonus payments and stock ownership of three of petitioner's officers, were as follows:

Name and Office	Salary and Bonus		Percentage of Stock owned
	1942	1943	
H. L. Hoffman, President and General Manager	\$18,688.52	\$63,613.20	50%
R. A. Yarcho, Secretary.....	2,483.25	5,762.26	None
Walter S. Harmon, Vice President and Engineer.....	7,244.18	22,171.08	None

Petitioner was located in a number one labor area which made it difficult to obtain contracts from the Army and Navy. Hoffman was instrumental in getting various people together, both in the Los Angeles and San Francisco areas, to form an association called West Coast Electronic Manufacturers Association, of which he was elected president. The association contributed substantially in helping the smaller companies to secure war contracts.

On recommendation of the Navy in 1943, petitioner was awarded the Army-Navy E award in 1944.

Under date of September 8, 1943, petitioner negotiated for a bank loan from the California Bank of Los Angeles. Among other provisions the agreement contained one prohibiting the payment of dividends by petitioner without the prior written consent of the bank. Petitioner paid no dividends in 1943.

Hoffman was 38 years of age in 1943. He received a degree of Bachelor of Arts from Albion College,

Michigan, in 1928, with a major in both business administration and philosophy. From 1928 through 1941, his compensation for services rendered other business firms was substantially as follows: [31]

1928 Sparton Radio.....	\$ 60 and \$75 a week
1929 Reynolds Spring Co. Football coach	
1929 Ellis Bishop Co.....	\$100 month plus addition
1929 Broadway Department Store.....	\$125 month
1930 to	
1935 Firestone Company	\$130 to \$300 month
1936 Firestone Store	\$275 or \$280 month
1937 Electrical Distributing Co.....	\$275 month
1938 In business for self	
1939 Sales Agent for Mfg. representa- tive business	\$1,900 year
1940 Lumber Mfg. Co.	\$4,700 year
1941 Peerless Electrical Manufacturing Co. (paying own expenses).....	\$13,000 year

During this period he gained experience in practical factory and machine work and methods; supervision of factory production and personnel, merchandising, developing distributor organizations, sales programs and service organizations; training factory and sales personnel; coordinating sales programs and factory schedules, and salesmanship. Part of his experience was in the line of electrical products, including radios and fluorescent lighting.

Hoffman was the only salesman and business solicitor employed by petitioner in the years 1942 and 1943. He obtained war contract orders in the amount of \$4,382,050.13 in 1942 and in the amount of \$881,244.81 in 1943. Production and delivery under the orders obtained in any one year was not necessarily limited to the year in which the order

was obtained. The war contract orders, above mentioned, were of the fixed price competitive bid type. Hoffman was also in charge of personnel. He observed a 14-to-16-hour day. Petitioner did not have a Washington, D. C., representative in 1942 and 1943.

The type of war contracts obtained and performed by the petitioner in 1942 and 1943, required the exercise of managerial, engineering, and mechanical skill [32] and inventiveness in design, production, procedures, tooling, testing equipment, and the efficient use of, or substitution for, materials which were critically short in supply; and many of the orders were of a type not solicited by comparable companies, or orders in the performance of which other companies had failed. The major war products produced by petitioner in 1942 and 1943 were frequency meters, variable condensers, antenna kites, phantom antennas, noise peak limiter and electronic relays, and electronic firing error indicators.

Harmon was 39 years of age in 1943. His compensation for services rendered other firms in years prior to 1942, were substantially as follows:

1926 Music Master Corp.....	\$35 wk.
1927 Distanttone Radios	40 - 50 wk.
1928 Dayfon Electric Co.....	35 - 55 wk.
1932 Zenith Radio Corp.....	60 - 65 wk.
1933 Utah Radio Products.....	65 wk.
1934 Emerson Radio & Phonograph Corp.	75 wk.
1936 Mission Bell Radio Mfg. Co....	50 wk. plus 10c each set sold
1940 Mitchell-Hughes Co.....	100 wk. (plus agreement for 50% of net profits, never received).

During this period he gained experience in the fields of radio engineering, design and development in both the automobile and household radio fields. While with Zenith Radio Corporation he developed the first practical single unit automobile radio made. While employed with petitioner, 1942 and 1943, he devoted his entire time to his engineering duties, working 16 hours a day, six days a week and sometimes part time on Sunday. He was also in charge of inspection. He spent some time visiting and conferring with other engineers in different sections of the United States.

The Continental Radio and Television Corporation, which was succeeded by the Admiral Corporation, was engaged in the business of radio manufacture [33] at Chicago, Illinois. In 1942 it had total net sales of about \$7,500,000, and in 1943 it had total net sales of about \$14,149,513. It had a net profit, after paying salaries and before payment of taxes, for 1943, in the amount of \$1,098,633. All of its 1943 business was from Government orders. The salaries of its officers remained the same in 1943 as they were in 1942, for which years they were substantially as follows: President, \$50,000; Vice President, \$35,000; Vice President, \$30,000; Treasurer, \$18,000; Assistant Treasurer, \$12,000; Secretary, \$15,000; Assistant Secretary, \$12,000; and Washington representative, \$8,600. Previous to 1942, it had been the habit of this corporation to increase salaries when it had a successful year. But no increase was permitted at this period, "according to law."

Gilfillan Bros, Inc., was incorporated in 1917, and was in active business in and around Los Angeles. It had been in the business of manufacturing household radios since 1922. It also manufactured electronic equipment, radar and aircraft mechanical parts. In 1941 an estimated 75 per cent of its business was military work and 25 per cent related to commercial radios. At the beginning of 1942 it was manufacturing radios and aircraft precision parts. For the fiscal year ended May 31, 1943, it had net sales after renegotiation in the amount of \$3,495,822.57. It had a net profit, after renegotiation and before payment of taxes, in the amount of \$306,949.64. The salaries of its officers for this period were as follows: President, \$32,432.40; Vice President, \$14,999.92; Vice President, \$14,999.92; J. G. Gilfillan [office undesignated] \$10,500; Vice President, \$8,400.08; Secretary-Treasurer, \$4,252.22. [34]

All of these officers except the Vice President, whose salary was \$8,400.08, were stockholders. The salary of the president had remained the same for a period of 15 or 20 years. The salary of its engineers for this period were as follows: Chief engineer, \$15,000; Assistant Engineer, \$12,000; Engineer, \$10,000. Its total number of employees increased in 1943 from 750 to 1,000 at the end of the year. The officers' salaries of Gilfillan Bros., Inc., were "frozen during the war years."

Reasonable compensation for services performed by Hoffman as president and general manager of petitioner for the year 1943 was \$40,000. Reasonable compensation for services performed by Harmon as vice-president and chief engineer of petitioner for the year 1943 was \$22,171.08.

OPINION

Section 23(a)(1)(A) of the Internal Revenue Code provides as follows:

Sec. 23 Deductions From Gross Income.

In computing net income there shall be allowed as deductions:

(a) Expenses.—

(1) Trade or business expenses.—

(A) In General.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered;

* * * *

Petitioner claims the right, under this section, to deduct the following amounts paid as compensation to its officers in computing its net income for the taxable year 1943:

Name	Position	Amount paid
H. L. Hoffman,	President & General Manager.....	\$63,613.20
W. S. Harmon,	Vice-President & Chief Engineer.....	22,171.08

Respondent disallowed \$38,613.20 as to Hoffman's salary and \$10,171.08 as to Harmon's salary as "excessive compensation," thus allowing petitioner to deduct as compensation for its president and vice-president in computing its net income for 1943 the sums of \$25,000 and \$12,000, respectively.

The question, therefore, to be determined by this Court is, as previously stated, what is a reasonable allowance for salary or other compensation for the personal services actually rendered to petitioner by each of the above-mentioned officers during 1943.

“It is well settled that the question of what constitutes, for the tax deduction here in issue, reasonable compensation to a specific officer of a corporation, is essentially a question of fact to be determined by the peculiar facts and circumstances in each particular case.” *Miller Mfg. Co. v. Commissioner*, 149 Fed. (2d) 421, 422. See also *Capitol-Barg Dry Cleaning Co. v. Commissioner*, 131 Fed. (2d) 712.

Petitioner strongly urges that this case should be decided on the basis of regulations promulgated by the Commissioner wherein the rule is stated in Regulations 111, section 29.23(a)-6 (2) and (3) as follows:

(2) The form or method of fixing compensation is not decisive as to deductibility. While any form of contingent compensation invites scrutiny as a possible distribution of earnings of the enterprise, it does not follow that payments on a contingent basis are to be treated fundamentally on any basis different from that applying to compensation at a fiat rate. Generally speaking, if contingent compensation is paid pursuant to a free bargain between the employer and the **individual made before the services are rendered**, not influenced by any consideration on the part of the employer other than that of securing on fair and advantageous terms the services of the individual, it should be allowed as a deduction even though in the actual working out of the contract it may prove to be greater than the amount which would ordinarily be paid.

(3) In any event the allowance for the compensation paid may not exceed what is reasonable under all the circumstances. It is in general just to assume that reasonable and true compensation is only such amount as would ordinarily [36] be paid for like services by like enterprises under like circumstances. The circumstances to be taken into consideration are those existing at the date when the contract for services was made, not those existing at the date when the contract is questioned.

Though the regulation might be considered none too clear, it is clear that the statute is of paramount weight and it requires reasonableness in salaries, so that the regulation must be understood as applying that test, even though there is contingent contract, also to be considered. The language of the regulation as to contract is limited by the language, consistent with statute, as to reasonableness. We have here considered both elements.

The Internal Revenue Code provides that the salary or other compensation paid or incurred in carrying on any trade or business must be reasonable. The regulations above quoted do not alter the plain meaning of the Code. There is no part of the regulation that provides, specifically, that any form of contingent compensation is exempt from the test specified in the Code, i.e., that it must be reasonable. On the contrary, the regulations provide that “any form of contingent compensation invites scrutiny” (emphasis added), further, “Generally speaking, if contingent compensation is paid pursuant to a free bargain between the employer and

the individual made before the services are rendered, not influenced by any consideration on the part of the employer other than that of securing on fair and advantageous terms the services of the individual, it should be allowed as a deduction even though in the actual working out of the contract it may prove to be greater than the amount which would ordinarily be paid." (Emphasis added.) Neither of these statements establishes the rule that a contingent contract for compensation, fair and equitable when made, is always to be considered binding at a later date and thereby exempt the corporation from showing the amount paid was reasonable. [37] The statement that any form of contingent compensation invites scrutiny is an indication that this section of the regulation does not exempt a salary from being reasonable. The sentence beginning with the words "Generally speaking" does not establish the rule as contended by petitioner, for the words themselves indicate that other requirements may be imposed. Section 29.23(a)-6 (3) provides that "In any event the allowance for the compensation paid may not exceed what is reasonable under all the circumstances." The remaining portion of the section does not alter the conclusion that the amount paid must be reasonable.

Austin et al. v. United States, 28 Fed. (2d) 677, relied on by the petitioner, though stating generally that it is immaterial that the actual working out of a contract may prove greater than the amount ordinarily paid, concludes that "under the peculiar

facts" in that case, the contract was reasonable. The corporation, at the time of contract, was financially unable to continue in business and practically gave it up. In *William S. Gray & Co. v. United States*, 35 Fed. (2d) 968, some of the parties involved were not stockholders, there had for some years been a settled policy of compensation on a contingent basis, and the corporate earnings did not depend upon subordinates. The business, the court said, was unique, and the policy of paying on a contingency of earnings was a part of the business, necessary for its success. The salaries were found to be reasonable. Other cases cited are not found helpful.

Turning now to the question of what is reasonable compensation for each of the two officers here under consideration. The burden of proof, generally speaking, "is upon petitioner to establish the invalidity of the deficiency assessment." *Am-Plus Storage Battery Co. v. Commissioner*, 35 Fed. (2d) 167. [38] However, this Court may determine that an amount greater than that allowed by the Commissioner and less than that claimed by petitioner is a reasonable allowance for salaries or other compensation if the facts in the case justify such a conclusion. *Affiliated Enterprises, Inc.* 42 B.T.A. 390, reversed on other grounds, 123 Fed. (2d) 665; *Wagegro Corporation*, 38 B.T.A. 1225; *Heywood Boot & Shoe Co. v. Commissioner*, 76 Fed. (2d) 586.

In the light of the overall picture of the case before us, we cannot say that petitioner has established that the \$63,613.20, representing salary and bonuses, paid to Hoffman was a reasonable allow-

ance for ordinary and necessary expense for carrying on the business. We are not satisfied that the contract of employment, dated December 4, 1941, was the result of a "free bargain" between petitioner and Hoffman to secure his services, within the intendment of the regulation. Hoffman, at the time he contracted with the petitioner corporation itself, for the contingent salary here involved, was the owner of 110 of the 413 shares of stock, and a director, and had a contract for the purchase of the remainder of the stock. Also, he had a contract with the other individual stockholders, the Warners and Fleming (as with Schmieter from whom he had acquired the 110 shares), that he be made general manager on a basis of 3 per cent of gross sales. The contract for purchase of the Warner and Fleming stock was consummated on December 4, 1941, immediately after Hoffman's employment as general manager. All of this means to us that there was not in this matter the free bargaining and arm's length transaction, between a corporation and a proposed employee for services on a contingent basis, with which, under the regulation, there should not be interference.

At the time of the signing of the contract of employment between petitioner and Hoffman December 4, 1941, there is no indication but what the [39] parties thought that the business would continue the manufacture of radios as in the past. We realize that petitioner's business activities were in poor condition at the time Hoffman closed the negotiations for acquiring stock and management control

of it and that a great part of the success of the venture was due to his efforts. Conditions of the business had changed radically by the taxable year, here in question. In 1943 petitioner did an unusually large amount of business, attributable in the main, not to services rendered by Hoffman but to war conditions of the year. There is no indication that his services that year were of any greater value than the year before when he received a substantially smaller salary and bonus. In fact, the contrary may be true since he obtained war contract orders in the amount of \$4,382,050.13 in 1942 and in the amount of only \$881,244.81 in 1943. We cannot attribute the importance to Hoffman's services that is urged by petitioner. Under all the circumstances and facts, we have concluded that \$40,000 is reasonable compensation for Hoffman for the year 1943.

The contract of employment between petitioner and Harmon is on a different basis. We think it of much importance that Harmon owned no stock of petitioner, in fact had no interest in the corporation other than that of an employee. There was, therefore, "free bargain" between him and the petitioner for his services. The fact that he was later made an officer does not, in our opinion, change that relationship. At the time of the confirmation of his contract by petitioner's board of directors, May 14, 1942, this country was already in war and petitioner had already secured contracts for a large amount of business and it must have been apparent that a "first class engineer" would be needed. Har-

mon's testimony, at the hearing, impressed us. He was [40] largely the "brains" behind the production end of the business and, therefore, was entitled to a substantial salary for his services. Since Harmon had charge of production and production was much greater in 1943 than in 1942, it is reasonable to assume that the amount of work and responsibility would also be increased in the latter year. We have some evidence of payments to engineers in the amount of \$15,000 but no comparison of the duties, responsibilities, or hours required to work. On the other hand, Harmon worked long hours and had the responsibility of the engineering department.

Considering all the evidence, we have concluded that respondent erred in disallowing part of the salary and bonus paid to Harmon, and that the total amount paid (i.e., \$22,171.08) should be allowed as reasonable salary or other compensation for personal services actually rendered.

Decision will be entered under Rule 50.

Entered June 29, 1948.

The Tax Court of the United States
Washington

Docket No. 11683

HOFFMAN RADIO CORPORATION (Formerly
Mission Bell Radio Mfg. Co., Inc.),

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Memorandum Findings of Fact and Opinion of this Court, entered on June 29, 1948, the respondent filed computation for entry of decision under Rule 50, on August 25, 1948, to which the petitioner filed his consent on September 20, 1948. In accordance therewith, it is

Ordered and Decided: That there are deficiencies in income and excess profits taxes in the respective amounts of \$3,279.24 and \$32,262.38 for the year 1943; and that there is no deficiency in declared value excess profits tax for the year 1943.

Entered Sept. 22, 1948.

(Seal) /s/ R. L. DISNEY,
 Judge. [42]

The Tax Court of the United States

Docket No. 11683

HOFFMAN RADIO CORPORATION,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.Court Room No. 229, United States Post Office and
Court House Building, Los Angeles, California.

December 11, 1947—10:00 a.m.

(Net pursuant to notice.)

Before: Honorable Richard L. Disney, Judge.

Appearances: John B. Milliken and Harrison Harkins, Room 808, 650 So. Spring St., Los Angeles 14, California, appearing for the Petitioner. Earl C. Crouter, (Honorable Charles Oliphant, Chief Counsel, Bureau of Internal Revenue), appearing for the Respondent. [1*]

PROCEEDINGS

The Court: We have Docket 11683, Hoffman Radio Corporation, formerly Mission Bell Radio Manufacturing Company, and for the Petitioner we have Honorable John B. Milliken and Mr. Harrison Harkins, and for the Respondent Mr. E. C. Crouter.

State your case for the Petitioner.

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

Opening Statement on Behalf of the Petitioner
By Mr. Milliken

Mr. Milliken: May it please the Court, this proceeding results from a deficiency determined by the Respondent in income, declared value excess profits taxes, and excess profits taxes, for the calendar year 1943. The Commissioner proposed an aggregate deficiency of \$55,945.35. There are certain items that are not in dispute with respect to his determination, because they constitute overlapping items, the deductions of which have been received in years subsequent to the year 1943.

The Court: You can indicate those, Mr. Milliken, by the paragraph number in the petition.

Mr. Milliken: I have not alleged any error with respect to the later items.

The Court: I see.

Mr. Milliken: And they result in a deficiency of \$16,651.06, which left in dispute an item of \$39,294.29.

That deficiency results entirely from the errors alleged in the petition, and relates to the disallowance of compensation paid to the president of the corporation and to the chief engineer of the corporation. H. L. Hoffman was president of the corporation and he was paid by the corporation a salary in 1943 of \$8,800.00 and contingent compensation of \$54,813.20, or a total compensation of \$63,613.20. The Commissioner has determined that \$25,000.00 constitutes a reasonable compensation for Mr. Hoffman's services, and has therefore disallowed \$38,613.20 of that sum.

The chief engineer, Mr. Harmon, was paid in the year 1943 a salary of \$3,900.00 and contingent compensation of \$18,271.08, or a total of \$22,171.08. The Commissioner has determined that \$12,000.00 constitutes a reasonable compensation for him for the year, and has accordingly disallowed \$10,171.08. That is the basis of the determination of the deficiency.

Counsel expects the evidence to show in this case, briefly, that in the year 1941 Mr. Hoffman entered into certain contracts for the purchase of the stock of Mission Bell Radio, whose name was changed to Hoffman Radio Corporation, only a change in name. At the time he acquired stock the corporation was in an insolvent condition. It had operated for the years 1939, 1940 and 1941 at progressive losses resulting from its operations, and he entered into a contract to revive the corporation and purchase its stock and to place it [4] on its feet. We think we will show that he has done a magnificent job in that respect.

On December 4, 1941, he entered into a contract whereby his compensation was to be measured by three percent of the gross sales of the company plus a nominal fixed salary. So we have a case where the contract was entered into long prior to the year whose compensation we are now concerned with. We expect the evidence to show that it was an arms-length transaction, fairly entered into with divergent interests who held the same interest in the stock of the corporation as did Mr. Hoffman; that at no time was he the owner of a majority of the

stock, either at the time the contract was entered into or during the year 1943.

We expect to show further—I admit I have difficulty even following the Commissioner's determination with respect to the chief engineer. He had no proprietary interest in the corporation, and has never had. Mr. Hoffman sought to employ a chief engineer of the requisite ability, and on an arms-length transaction they entered into a contract, whereby the basis of his compensation should be a nominal fixed salary of \$75.00 per week, plus one percent of the gross sales.

The Court: When was that contract entered into?

Mr. Milliken: That contract was entered into in 1942, the year prior, January of 1942, prior to the year 1943 with which the Court is concerned. It was an annual contract [5] renewable, it was renewed in December of 1942 for the year 1943.

It is difficult for me to follow the determination of the Respondent, for the reason that it seems to me that once the Petitioner has proven, which we expect to prove, that an arms-length contract was entered into long prior to the year whose services the Court is concerned with, that if it is a bonafide contract entered into at arms length, representing a true bargain, the Commissioner's own regulations provide for the allowance of contingent compensation pursuant to such contract, even though, as the regulations state in article 29.223 (a) (6) of Regulations 111—that that will be allowed, despite the fact that it is a much larger amount than would

ordinarily be paid, if the employee is willing to enter into such a type of contract. We expect, your Honor, that the judicial eye will consider when there has been proven that that contract was an arms-length contract, entered into before the services were rendered, entered into before the money was earned, and we are prepared, if the Court so determines, to show that it was reasonable even on a comparative basis.

I think that fairly states the grounds of this Petitioner.

The Court: Mr. Crouter. [6]

Opening Statement on Behalf of the Respondent
By Mr. Crouter

Mr. Crouter: May it please the Court, the outline of the case, particularly with respect to the amounts involved for the sole calendar year 1943 involved herein, have been stated by counsel for Petitioner, and I will not repeat those figures. I agree from the pleadings that the case in the basis under which it arises here is related to the one calendar year and the issue of the reasonable amount of deduction for compensation to Mr. Hoffman, the president and general manager of the Petitioner, and W. S. Harmon, vice president and chief engineer, in the amounts stated by counsel.

Now, I might state that in accordance with the practice we have stipulated a great many of the basic facts with respect to the operation of the corporation during 1943 and in some prior years, the amounts of income received, the amounts accrued

and paid to the individuals and so forth, so we will have no difficulty on those scores.

I would just like to emphasize, though, to help to explain to counsel if he is so mystified by the Respondent's position here, that I believe the evidence will clearly show to the court, both the stipulated evidence and the oral evidence which I apprehend will be submitted, that we have the rather unusual situation here in that, particularly as to Mr. Hoffman, we have an agreement of December 4, 1941. I stress that date, because that is three days before 1941. I stress that date, because that is the three days before Pearl Harbor. [7] This was the Mission Bell ciates, Mr. Davidge and Mr. Douglas, got into the corporation, taking it over through purchase agreements and so forth from prior stockholders and from the corporation, and they undoubtedly contemplated continuing in the radio business, radio assembly and sales organization. The evidence will show that that business by government orders was terminated for practical purposes, by an appropriate order after April 22, 1942, so that, like a great many domestic industries, they could not proceed with the radio business.

The evidence will show that particularly when Mr. Hoffman made the agreement of December 4, 1941, he undoubtedly contemplated a continuation of the radio business. And now in 1942—I will just be brief in this because that is fully shown in 1942 and 1943—the evidence will further show that this corporation, like a great many corporations, jumped right into the war business. There is no doubt whatever it contributed a great deal to the war effort.

It did a great deal of subcontracting and worked with other corporations, with the prime contractors. I believe the evidence will show that 99 percent or more of the business of this Petitioner corporation in 1943 was either with the prime contractors or the subcontractors and related to government business, particularly in the radio field. So that it is a war industry, as far as 1943 is concerned, it is a war [8] industry as far as the activities of these two officers are concerned, and it is almost totally unrelated to the prior radio business which they had and which the compensation agreement contemplated.

The evidence will also show, if the Court please, that Mr. Hoffman was the 50 percent stockholder. He had an agreement whereby he would acquire all of the stock. There were only 413 shares outstanding. Mr. Hoffman did acquire all of the 411 shares in his own name, but he had an agreement with his two associates to acquire and buy the corporation, whereby after they were paid certain amounts they would become 25 percent stockholders, each, and Mr. Hoffman was to hold all shares of the stock in trust for the benefit of his other two associates until all of their initial investments were returned to them.

The Court: Was that agreement in effect at the time the contract was made?

Mr. Crouter: I believe it is dated about the same date. It is a part of the same plan, at that time. My main point there is that Mr. Hoffman was a 50 percent stockholder of the corporation prior to

the salary agreement date, and he was general manager of the Petitioner, he was president of the corporation, and undoubtedly one of the main motivating factors in the organization, so that the dividend base of the case does come into the picture, particularly from the [9] tax standpoint. No dividend as such was recognized or paid to any stockholder in the year 1943, and that, of course is a part of the picture from the Commissioner's standpoint.

Our position, briefly, is that the company did a lot of business, it did a good business, it made a good deal of income in 1943. It came out with a very good net income. We stipulate that there was a net income before deduction of compensation of these two officers and before federal taxes of \$257,-217.00. There are a great many other figures I will not burden the Court with, but that shows somewhat that it was a sizeable undertaking, and there should have been some recognition of the claim for return of investment here by stockholders, and some part of those profits clearly should be allocated to dividends. Some of the earlier agreements provide for payment of dividends to Mr. Hoffman, but the dividend phase of it was wholly neglected during these years.

Our main position, of course, is that the compensation which was paid and payable to these officers, and I believe all of it was paid during the calendar year, therefore there is no question of the two and one-half months requirement or anything of that sort in the case so far as I know now—our position

is that the amounts paid to these officers were unreasonable, say in connection with the whole deal and in connection with their services rendered, and also in connection with the question of some substantial return [10] for the capital investment, which was rather considerable. I will not attempt to indicate the figures on that, because I believe that changed a good deal during the year 1943, but there was a substantial plant investment here also, so that a large part of those profits, in our determination and position here, in fact constitute dividends of the Petitioner and should be treated accordingly and should not be deducted as compensation of the two main officers in the organization.

The Court: How do you relate this regulation, Mr. Crouter, into this situation? I have been interested in this regulation for some time and have had occasion to consider it. How do you relate that into this situation? I have in mind a rather dull and indefinite way perhaps, this theory: is it in your mind the fact that the situation changed because of the war's effects perhaps wipes out to some degree the effect of the regulation? What is your thought about that?

Mr. Crouter: I don't know whether this is a complete answer, but it appears to me that we still have the statutory requirement of reasonable compensation. It must be reasonable in connection with the business done and the services rendered and required and so forth. I appreciate that the regulations have gone quite far in recognition of contingent arrangements, but I do not believe that such

arrangements can be wholly recognized or sanctioned in the [11] cases where they just take all of the available profits and earnings of the company and treat them as compensation.

The Court: I am not passing on that question at all at this time, because I realize the final ultimate question is to be determined by the statute, but I was wondering whether you had the idea that the regulation was more or less not to be considered because the contract is made before the incidence of a brand new situation, so to speak, such as the war. Well, is there anything further in the way of a statement from Petitioner?

Mr. Milliken: No, I believe not, your Honor.

The Court: Put on your evidence.

Mr. Milliken: I should like to introduce at this time a stipulation of facts entered into by counsel for the respective parties.

The Court: File the stipulation, Mr. Clerk, and the facts therein set forth will be received in evidence.

Mr. Crouter: If I may do so at this time, I have told Mr. Milliken beforehand and Respondent objects to the portion of paragraph XVIII on page 6 of the stipulation, and we reserve our right to object in the first paragraph. Our objection there, if the Court please, is—

The Court: XVIII, you say?

Mr. Crouter: The bottom of page 6. Our objection there is that the figures included there with respect to [12] employees in the subsequent years, 1944, 1945, 1946 and 1947 to date are irrelevant and

immaterial and really have no place in this proceeding. It seems to me that things that happened subsequent will not help establish anything as to what was a reasonable compensation in 1943. That is the basis of the objection.

The Court: Well, sometimes later matters than within the limits help, and sometimes they are really immaterial. It depends a good deal upon the case. Without knowing any more about the case than I do at this juncture, I would not want to sustain your objection on that ground. This is not a jury case. I mean, at least I trust I will not give undue weight to anything that I may consider. Objection overruled and exception allowed. I don't mean to indicate by that I am now deciding the whole thing, and you may bring that up later, when I can judge that as we go along.

Mr. Milliken: May it please the Court, as I understand, the counsel for the Respondent, that his only objection to this stipulation, on the ground of irrelevancy and immateriality, that he requested to be placed in the first paragraph of the stipulation. I ask that for the reason that if there are some other objections which he has to this stipulation on the grounds of irrelevancy and immateriality, then I should like to know them, because the witnesses could be questioned accordingly. [13]

Mr. Cruter: That is the reason I raised the objection, and I told the counsel in advance that was the only objection I would raise, and that is the only objection I have to any part of the petition.

Mr. Milliken: I will call Mr. Hoffman.
Whereupon,

H. LESLIE HOFFMAN

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you tell us your name, Mr. Witness, please?

The Witness: H. Leslie Hoffman.

Direct Examination

By Mr. Milliken:

Q. Your name is H. Leslie Hoffman?

A. H. Leslie Hoffman.

Q. During the year 1943, Mr. Hoffman, were you employed?

A. I was employed by Mission Bell Radio Manufacturing Company as president and general manager.

Q. When did you first acquire your interest or employment with the Petitioner in this case?

A. My interest started away back in July and August of 1941. My actual employment took place on December 4, 1941.

Q. Mr. Hoffman, are you a graduate of any university? [14]

A. I am a graduate of Albion College, Albion, Michigan.

Q. Will you please start with your graduation from college and briefly outline to the Court what your employment had been up to December 4, 1941, and the capacity in which you were employed?

A. Well, starting in with college, I was another one of those fellows that had to work their way

(Testimony of H. Leslie Hoffman.)

through college, and I had a job as janitor in the bank there, and also started a clothing business on a consignment basis and a laundry business, so when I graduated from college I had three businesses operating, and I was planning on going on to do graduate work, but things at home were such that I had to go to work full time, and I went to work for Spartan Radio Company in Jackson, Michigan. I went to work there in the capacity——

Q What year was that if I may ask?

A. That was in 1928. I went to work there as a stock clerk and gradually progressed to the point of line foreman, and at that particular time the radio business was pretty good and we had to step the production up from 70 units to a good deal in advance of that. This was done satisfactorily, and I was given the job then, even at a young age, as night superintendent of Spartan Radio, in which I had approximately twelve hundred people under my jurisdiction. I stayed with Spartan until the summer of 1929.

Q. May I interrupt you. What business was the Sparton [15] Radio Company engaged in?

A. Well, Sparton Radio, actually the name of the company was Sparks-Withington Company, and they built the Sparton radios and Sparton horns, and the horns were sold direct to manufacturers and the radios were sold through distributors and dealer organizations.

I went from Sparks-Withington to a company called Reynolds Spring Company in Jackson. I happened to coach football on the side and was

(Testimony of H. Leslie Hoffman.)

working twelve hours at night, and they were interested in starting a lighting system for lighting stadiums, and when I got over there I found they were not quite ready to do it, so I took a job as foreman of their production assembly department. The things that were produced and assembled were Bakelite toggle plates and metal lights and things of that kind, and I stayed with them until the latter part of 1929.

Then I came out to California in about the early fall of 1929 and I went with a company out here called the Ellis Bishop Company. I didn't know anyone out here and didn't have any contacts, so I started out to become an investment salesman. Well, that lasted about sixty days, because, I think everybody remembers September of 1929, and there was no investment business.

After that I went over to the Broadway Department Store here in town as a trainee and due to my previous [16] experience in my own stores and when I was in college and prior work, working vacations and so forth, I did know something about the merchandising business, and I stayed with the Broadway until the early part of 1930, when I took a job with Firestone and I stayed with Firestone quite a period of time in various capacities. My first capacity was a clerk, and I was transferred from there to a college trainee class, and then I became assistant to the battery sales manager for the eleven western states, and in 1931 I was given the job of battery sales manager for the eleven

(Testimony of H. Leslie Hoffman.)

western states. My job in that particular position was to—at that time Firestone was just going into the merchandising of these various products. They, of course, had built up the distribution and buyers, but they had no distribution on these particular products, and it was my job to go out and show the salesmen how to sell batteries and develop programs that would sell batteries. During that short period of time when I handled batteries exclusively I developed an oil company merchandising unit designed to go out in the field for Firestone and open an entirely new distribution program for Firestone through the various oil company stations, such as Union Oil Company and so forth. Due to that particular work I was put in charge of the oil company business for a period of time and I had the job of training some two thousand oil company attendants in the proper merchandising of these various products, tires, batteries and spark plugs.

During the depression, of course, the ax fell there as well as other places, and from 1932 to 1933 I took over five different departments. Those particular departments were brake-lining and spark plugs, accessories and repair material, motor-cycle tire and air plane tires, and about that time the total sales of all those departments were running around four or five hundred thousand dollars, and during the next eighteen months I took that up to roughly around three and a half million, and that involved working out a multitude of problems for manufacturing, because we were just going into

(Testimony of H. Leslie Hoffman.)

the manufacture of batteries and brake-lining, and the actual merchandising of it. Our territory embraced the eleven western states. We had seven district offices with district managers in each of these districts, each having from five to fifteen wholesale salesmen as well as a good many retail stores actually owned and operated by Firestone.

In 1933, the latter part of 1933, I had to go back to Akron to work on some of these merchandising programs and also attend the various conferences in Chicago, and on my return I became quite ill and subsequent developments indicated I had to have a major operation, and due to the operation it eliminated the possibility of my traveling for a period of time, so I was transferred to operate the retail store in Portland, Oregon, the Firestone retail store. This store had [18] shown a substantial loss the previous year, and I was successful in working about twenty hours a day to transfer it from a deficit to a substantial profit. I was also successful in introducing a few new policies that Mr. Firestone himself was acquainted with and adopted, such as a pension program for the employees and a few other things.

I left Firestone in the latter part of 1936, primarily due to the fact that I could take it but I couldn't dish it out, because right at that time they were asking college fellows to work for fifty-five and sixty dollars a month, and all it was causing was a lot of pilferage of the till and so forth. I tried to get them to change their policies, but they

(Testimony of H. Leslie Hoffman.)

established my salary scales and things like that, so I couldn't do anything about it, so I took a job with a company in Portland, Oregon, starting in 1937, called the Electrical Distributing Company. This Electrical Distributing Company was a wholesale distributor of appliances and radios. They had the Zenith radio line, the ABC Washers, and a good many other items. My job was merchandising, general manager, and it so happened that the owner of this business had several other interests and he wanted somebody to operate the business. I had direct charge of the entire sales force, which consisted of seven men, and the inside operation of about ten people, and during 1937, which was normally a bad year, we took the sales from around four [19] hundred thousand to up to seven hundred thousand. The operator of this business had promised me a participating deal, which he refused to go through with, the latter part of the year, and I didn't particularly care for Portland anyway, so I left and came back down here with the very definite determination that I would be in business for myself from that point forward, or at least as close to it as I could come, and I worked in 1938 and went back east several times to get lines to represent as a manufacturer's representative out here, and was successful in getting a refrigerator line and a radio line and a few other lines, and it was in this manufacturer's representative business I became interested in fluorescent lighting, and I could see the possibilities of fluorescent lighting,

(Testimony of H. Leslie Hoffman.)

and I couldn't get the right connection in the east, so I designed a lamp and got a company called the Lumidor Manufacturing Company to build it, and I took over the sales of the fluorescent end of their business. We built a double fluorescent table light and we built a light fixture for offices and lighting fixtures for factories, and we did fairly well with it, but another problem came in this, and that was, here in Southern California, you have a large percentage of 55-cycle current. The General Electric and some of those other manufacturers did not build 50-cycle transformers, and in trying to get a 50-cycle transformers I covered the front here of the various transformer [20] manufacturers here and I got the Peerless Electrical Products interested in building a 50-cycle transformer, and worked out a program with them to handle their sale of the fluorescent transformers. It became evident the latter part of 1940 that my activity with Peerless would conflict with my activity at Lumidor, so I came to a pleasant understanding with Lumidor and devoted all my time to Peerless. At that time Peerless' business, as I recall it, was between sixty and seventy-five thousand dollars a year, and due to the increase in volume that I generated their business went up about four or five times that much, and of course that brought in a good many problems of manufacturing and a few things like that and I had to spend quite a lot of time on the inside trying to help out on that score.

(Testimony of H. Leslie Hoffman.)

In along about July of 1941 Peerless was under-financed, and they brought in a financial arrangement with one of the banking houses here, and they brought in a manager that wanted to change my entire program. However, that was worked out, and I still have the—I was trying to get a participating interest in Peerless but that was not possible, at least they said it was not, so I wanted to get some kind of a deal where I could participate to get my share in the results of my generating—the results of my ability, which I had been trying to do for quite a period of time. At that particular time I found out about Mission Bell. Due to the fact—

Q. May I interrupt you please, Mr. Hoffman. When you were employed by Lumidor Manufacturing Company, by Peerless Electrical Products Company, what were the terms of your employment, how were you compensated in your employment?

A. Well, with Lumidor I worked on a straight 10 percent commission.

Q. A 10 percent commission? A. Yes, sir.

Q. Of the sales?

A. Of the gross sales, after any taxes.

Q. Of the gross sales?

A. That is right, after any taxes.

Q. With respect to Peerless?

A. With respect to Peerless I started out at 10 percent, then I had a sliding scale.

Q. Was that 10 percent of the gross sales?

(Testimony of H. Leslie Hoffman.)

A. Yes, sir, then we had a sliding scale depending on whether or not it went to Nevada or Washington, and it was 10, 8 and 5

Q. What was the business when you took hold of Lumidor as sales representative, in round dollars, and what was the volume of their business in round dollars, and what was the volume of their business in round dollars upon your combination of employment with them?

A. I don't know those figures, Judge, but I do know [22] how much business that I developed for Lumidor. It was approximately an additional fifty to seventy-five thousand dollars.

Q. And with respect to Lumidor, Lumidor Manufacturing Company, what was your compensation received with respect to this 10 percent?

A. As I recall it, it was around \$4500.00.

Q. And what did you receive in the year 1941 from Peerless Electrical Products Company?

A. I received around thirteen thousand dollars in the year 1941.

Q. Did you have a reason for leaving the Peerless people?

A. Yes and no. I was still looking for this kind of a deal that I could get in on a basis where I could share not only on a percentage basis but build something up of material consequence to myself, and that was the reason I was looking around for something else, but I still had my connection with Peerless at the time that I went into the Mission Bell picture.

(Testimony of H. Leslie Hoffman.)

Q How did you first learn of the Mission Bell Radio Manufacturing Company?

A. Well, I knew of the Mission Bell because the Peerless Electrical Products were selling transformers to them and I had worked there and naturally I knew of that. Then I also heard about it in the street that they were very much in [23] trouble, and it was suggested by some friends of mine that I ought to go over and talk to them and see if I could work out a program to rehabilitate the company.

Q. Did you make an investigation with respect to the financial condition and the sales volume and reputation of the Mission Bell in the year 1941?

A. Yes, I did. I made a very thorough investigation.

Q. What did your investigation disclose?

A. Well, my investigation disclosed that the company had generally lost money from 1936, and that in 1940 they had worked out a program with some promoters in Hollywood who had the stock tied up for about a year, and the company was just standing there with nobody doing anything about it. It also disclosed that the lease on this controlling stock was expiring and that although the company was in an insolvent condition something could be done to rehabilitate it. I found that they had, number one, they had sold a certain percentage of their product to Sears, Roebuck. They did have an RCA license, which was necessary to a company building radios. However, the value of that was considerably

(Testimony of H. Leslie Hoffman.)

depreciated due to the loosening up by RCA and giving that to most any reputable manufacturer; by the latter part of 1941 as subsequent developments occurred, there was no necessity to have a license. But I also found that the company had three employees there, Mr. Fleming, president of the company, his [24] office girl and a red-headed boy in the shipping department. That was the entire organization, and it was just in stagnant condition.

I went there and went over the facts with Mr. Fleming, trying to find out what chances it had and whether it was worth going into, and I found that it didn't have very much.

I also, as a matter of fact while I was there at the time of my first interview, the sheriff was around with a sign and he was about to tack it up, and with a little gymnastics on Mr. Fleming's part he avoided that but it was just a matter of time before the place was closed up, particularly due to the fact that the creditors were—I couldn't see any place where they would get any money.

Q. Did you investigate the profit position of the company for the year 1941, or did you ascertain the sales made by the company and the profits during the year 1941? A. Yes, sir.

Q. What was that?

A. Well, of course sales were only \$29,000.00 and the loss was \$15,000.00.

Q. Do you recall—the sales were \$29,000.00 Do you recall the cost of the sales?

(Testimony of H. Leslie Hoffman.)

A. I think it was greater than the \$29,000.00. As I recall, it was \$30,000.00 or \$32,000.00. [25]

Q. Well, it is stipulated that the cost of sales was \$30,000.00, and you investigated and found they had a loss of \$15,000.00 for the year 1941?

A. Yes, that is right.

Q. Had Mission Bell at any time since it was incorporated, and we have stipulated that it was incorporated in 1932, had it ever operated at a profit?

A. Yes, it had operated at a profit in 1936, was its biggest year, and as I recall it they did something like \$350,000.00 worth of business, and made around \$8,000.00, and of course with the business, the way I visualized it, the business was not doing—they were not doing the volume of business that could be done, nor were they managing the business in such a way that they made the maximum amount of money that could be made.

Q. We have stipulated, Mr. Hoffman, that for the years 1939, 1940 and 1941, Mission Bell's respective losses from operations or in round figures were \$8,000.00, \$11,000.00 and \$15,000.00 per year. Was that fact made known to you?

A. Yes, it was.

Q. And what did you do with respect to making further investigations, if you did make any, incident to acquiring stock of Mission Bell?

A. Well, there were quite a few things I had to do. In the first place, there was a good many skeletons that [26] had to be taken out of the closet and buried. The first thing I ran into was that Mis-

(Testimony of H. Leslie Hoffman.)

sion Bell was owned by two men, a chap by the name of Schmieter and a chap by the name of Fleming. I found that they were not getting along too well and couldn't get together on any of their ideas, and Schmieter had left the company and taken another position. And then I also found that the other chap, Warner, who had purchased the controlling stock, was in serious trouble with some movie interests that he had, and so I had to find out what kind of a deal could be made to get Schmieter's stock, Warner's stock and Fleming's stock, and of course I investigated that phase of it, and I investigated what the potential business would be, that is both through the private brand manufacture and through the franchise sales. I found that Mission Bell in one way had caused a great deal of animosity on the part of the dealers, inasmuch as they would sell the retail trade at about the same price they would sell the jobber, so there was a certain amount of animosity there, but in talking to some of the dealers and so forth I felt that that could be overcome. And so my preparatory work as I say was done in the latter fall of the year, as to finding out what kind of a deal could be made with the stockholders if we were successful in raising the money to rehabilitate the company.

Q. Did you know what the stock could be purchased for? [27] A. Yes, sir.

Q. Did you have the capital with which to purchase the stock? A. No, sir.

(Testimony of H. Leslie Hoffman.)

Q. Where did you seek to raise the capital, if you did seek it?

A. I didn't have the money to buy the stock, and it was my opinion, which has subsequently been substantiated, that everything that could be done to cut down the amount of expenditure by the company for operating expenses and everything that could be done to make and improve the business should be done. In other words, it was my complete feeling from the origination of the thing if we did interest some capital, the capital should go into the business, not to pay for the stock, and that the stock should be paid for as the company was pulled out by its bootstraps by myself, and that was the sort of project we went into, and of course that was a kind of hard deal to sell from a financial viewpoint.

Q. Were you able to interest other people in the deal of this fashion?

A. Well, I was able to interest other people but it was not exactly easy. In the first place, I wanted to find somebody who knew something of the radio business so they would understand the problems of the rehabilitation of this company. I wanted to find someone with sufficient capital [28] so that if the company did progress that we could continue the progress of the company, and towards that end I started a door-to-door canvass of Spring Street down here to see if I could find somebody that would sort of fit that description. I had several contacts that wanted to put money in it and I had

(Testimony of H. Leslie Hoffman.)

several people who had the confidence in me and said you take it and do what you want to do with it and we think you are worth it and so forth, but that was not the kind of a deal I wanted. I wanted a business deal and I frankly wanted somebody I didn't know too well socially to go into it on a business basis with me, and in making the rounds of Spring Street I ran into a lead at the Nelson Douglas Company down here and they told me about Mr. Douglas, Walter Douglas, who had been with them and was interested in the radio business, who had already financed a couple of other radio operations, and suggested that I go to see him, and I went around and found they were in the back of—had offices in the back of Edgin Company. I knew Mr. Edgin from previous contacts, and I told him what I was there for and he says, "Oh, hell," he says, "we seen that thing and set it aside, no use talking to him about it." I said, "Well, I would like to give it a touch anyway, and I would like to tell him what my ideas are on it." So I went back and talked to them, and I had an operating statement, past sales, and their current financial position, and they didn't know me and I had to sell myself to them, and then I told them what my ideas were of the thing, and that is that any money that we did raise, and we had to have an extra amount of money to ward off the creditors and work out, I talked to some of the creditors and found that I could work out a time-payment basis on the accounts payable, and that the rest of the money

(Testimony of H. Leslie Hoffman.)

should go into the business to rehabilitate the business, and that the stock should be acquired on some such basis whereby that we could pay for it over a period of time, and so we discussed it.

Q. What do you mean "we," who is called "we"?

A. Mr. Douglas, Mr. Davidge and myself, and we finally came out with the formula on the thing of how to do it, and Mr. Davidge suggested that we go to see his attorney, which we did, and his attorney, Mr. Irving Walker at that time, Walker, Adams & Duque, worked out these various contracts, and we worked them all out at the same time. One was sort of synchronus with the other.

Q. What time in the year 1941 did you have these conversations of which you spoke with Davidge and Douglas?

A. Well, it was in October, November. I remember I had a hard time getting both Douglas and Davidge, because it was just the opening of the duck season and I had a hard time finding them, and it was either in October or November that we had the conversations, and of course it took quite a period of time, because I couldn't devote all of my time to [30] it at that time to get all these bases of agreements with these various people.

Q. Had Davidge and Douglas known of you before you met them incident to this deal?

A. No, sir.

Q. Are they related to you in any manner?

A. No, sir, they are not.

(Testimony of H. Leslie Hoffman.)

Q. Did you know that they had been in—what business they had been in before, Davidge and Douglas?

A. Well, that was—of course what I was after was somebody that knew something about the radio business, and they had operated the Standard Utilities Company, which was the Farnsworth distributor in this area.

Q. Farnsworth Radio?

A. Farnsworth Radio, yes, sir. They had also been in a company called the Edgin Company, that was the service parts and wholesaler for Philco and Motorola, car radios, and in addition to that they had an appliance establishment, which was sort of a retail adjustment operation in refrigerators and stoves and that sort of thing, so they had been in the business for a period of time, particularly from the distributing end of the business.

Q. What arrangement did you make with them, if you remember, with respect to the capital they were to invest or what interest they were to have in this company, assuming [31] you could acquire all of this stock?

A. Well, the program was that I would put in two thousand dollars and they would put in four thousand dollars apiece, making a total of ten thousand dollars, and they were each, each of those, that is Douglas and Davidge, would receive 25 percent and I was to retain 50 percent.

Q. That is, Davidge and Douglas each have 25 percent of the total common stock outstanding?

(Testimony of H. Leslie Hoffman.)

A. Yes, sir.

Q. And you would have 50 percent of the common stock?

A. Yes, sir, that is right, and there were further stipulations or arrangement, whereby each of the two people who put in the majority of the money could close up the company at any time that they wanted to, or take any action as far as the financial position of the business.

Q. Did you discuss with Davidge and Douglas what should be the terms of your employment and compensation to be received?

A. Yes, sir. I explained it to them how I had been working on a commission basis and wanted to continue that because I believed in incentive compensation, and I also discussed with them the fact that the company couldn't pay any salary, and that they were going to have to pay me a salary, and that I would demand that they would automatically sink any cash back immediately for material. We discussed various means and deals [32] and finally settled on a basis of this 3 percent program, which was considerably less than I had been making percentagewise, but it was——

Q. You say 3 percent deal. Three percent of what?

A. Three percent of the gross sales after taxes.

Q. I see. Did Davidge and Douglas assent to that or did they dissent?

A. Well, they naturally assented to it, because in the first place we drew up the contract together,

(Testimony of H. Leslie Hoffman.)

I mean Davidge's counsel drew up the contract, and it was the result—we went in and told them what we wanted, it was the result of our conversations, and then he drew it up.

Q. Then, as I understand it, the total outstanding stock owned by Schmieter and Fleming and Warner, you were to acquire that under contracts from them, is that correct?

A. Yes, sir, that is right.

Q. Did you enter into any agreements with Davidge and Douglas with respect as to how that stock should be held by you for their benefit?

A. It was to be held as the trustee by me, and I fixed it or the attorney fixed it that I acquire the stock from the original owners, but I had a contract with them that during the period of time that we were acquiring this stock they had a 25 percent interest, and that after the stock was acquired that it would be automatically turned over to them. [33]

Q. That is respective 25 percent portions?

A. Yes, sir, that is right. [34]

Q. It has been stipulated, the contract whereby you bought this stock from Schmieter, Warner and Fleming. We have also stipulated the contract which you have with Douglas and Davidge, and did their attorneys draw up the employment contract?

A. Their attorneys drew up the employment contract.

Mr. Crouter: If your Honor please, I will ask that be specific, because we have two or three employment contracts, and I want to know as the basis for cross examination.

(Testimony of H. Leslie Hoffman.)

Q. (By Mr. Milliken): Did you have an employment contract there after you had required this stock, after Douglas and Davidge had agreed to provide the capital, did you enter into an employment contract with Mission Bell?

A. Yes, sir.

Q. On what date?

A. Well, the employment contract was drawn up, as I say, by Irving Walker, who was Davidge's counsel. However, he recommended that the former board of directors accept the contract, that is vote on the contract, and at the same time elect Davidge and Douglas as the other two members of the board of directors, and so consequently Irving Walker drew up my employment contract, and then there was a meeting of the board of directors, of the former board of directors of Mission Bell, and——

Q. Just a moment.

A. We were asking——

Q. Just a moment, Mr. Hoffman.

A. O. K.

Q. We have stipulated Exhibit 14, an agreement purportedly entered into between yourself and the Mission Bell Radio Corporation?

A. Yes, sir, that is right.

Q. Is that the employment agreement of which you speak?

A. That is the employment agreement.

Q. And that employment agreement, prior to having been entered into, was fully discussed with Davidge and with Douglas?

A. Yes, sir.

(Testimony of H. Leslie Hoffman.)

Q. It was with their approval?

A. Very definitely.

Q. And did they insist upon it?

A. They insisted that we use this formula that we are talking about, No. 1, that there should be an inventive, No. 2, that anything taken out in the way of returns or salary would be only as the company progressed, and this three percent was what we decided upon between the three of us, that is after negotiating back and forth. I asked for more, as a matter of fact.

Q. You have testified that you acquired the stock or had [36] contracts to acquire the stock, that you entered into the employment agreement. Who were the board of directors of the Mission Bell following December 4, 1941, when you entered into this employment contract?

A. There was Mr. Douglas, Mr. Davidge and myself.

Q. You were the only three?

A. Yes, sir, that is right.

Q. Did Davidge and Douglas continue on the board of directors through 1941?

A. Yes, or their appointees. Both of the men went into the service at various times, and in Mr. Douglas' case, his wife was given power of attorney and she acted for him, and in Mr. Davidge's case, he appointed an attorney to act for him, when he went in the service.

Q. Well, then, am I correct in saying that either Davidge or Douglas continued on the board of directors through 1941 or down to 1943, inclusive?

(Testimony of H. Leslie Hoffman.)

A. Yes, sir.

Q. Either they or their nominees?

A. Yes, sir, that is right.

Q. Were either they or their nominees present at all board of directors meetings?

A. Yes, sir.

Q. During the years 1941, 1942 and 1943?

A. Yes, sir. [37]

Q. What was the condition of the physical assets inventory of Mission Bell when you took it over in December 1941?

A. Well, it was like Fibber Magee's closet, it had a little bit of everything in it, and in order to be brief, there were less than 100 completed chassis, the rest of the—there were approximately, as I recall it, some 25 completed sets. The rest of it was an accumulation of odds and ends, as far as the inventory was concerned, most of it partially complete or practically enough of the component parts to complete, test equipment, which of course is an essential item in the radio business was old and some of it was useful and some of it was not. They had some rivet machines and one screened booth. That was about the extent of their equipment. They had three soldering irons, as I remember it, in the factory.

Q. You became the President and General Manager of Mission Bell in December of 1941, is that correct?

A. That is right.

Q. Did you find any contracts that the corporation had with other people, either for sales commission or employment contracts?

(Testimony of H. Leslie Hoffman.)

A. Yes, I did. As a matter of fact, that was one of the previous people's weaknesses. They made contracts with quite a few people. They had a contract, number 1, they had [38] a contract with a chap by the name of Hamilton to sell radios to National Union Tube Company in the east and Sears Roebuck in the east on a three percent basis, with a guarantee that this—on the basis he would guarantee \$100,000 a year business.

Q. In other words, this sales agent was to receive three percent of the sales?

A. Yes, sir.

Q. Gross sales?

A. Yes, sir, that is, in that particular area, that is outside of the 11 western states and to these two companies.

Q. What did you do, if anything, with that contract? A. Cancelled it.

Q. Did you find any other contracts?

A. Yes, sir, I found—well, of course, Mr. Fleming had a contract on a percentage basis, the previous president.

Q. What was the basis of his percentage contract?

A. Well, as I recall it, it was on a different basis at different times, but the one that we cancelled at that time was around a five percent contract.

Q. Five percent of the sales?

A. Yes, sir, that is right, based on the sales. Mr. Fleming had had some contracts with the Police Department and things like that, and he was trying to develop some business there. [39]

(Testimony of H. Leslie Hoffman.)

Then they had another contract with a chap by the name of Taylor. Taylor was one of those government agents located in Washington, D. C., and his basis of compensation was five percent on any contracts that he developed for the company on military business, and I cancelled that.

Q. And his basis was what percent?

A. Five percent.

Q. Now, what services did you immediately concern yourself with in the beginning, in January of 1942, after you had gotten into this business?

A. Well, there were quite a few things, of course. The first thing was to find out what materials we had that were useable and whether we could not sell the non-useable equipment. Towards that end we took the inventory. I had already been given one and took a new one, and then took the residue of parts and put it on sale to sell the parts. And then the first thing to do was to get some engineering talent. I could handle everything else about the business, but I didn't have the technical knowledge to handle the engineering phase of it, and my first activity was to see if I could not work out the right kind of a deal with the right kind of a person to head up our engineering.

Q. Did you make an investigation to find out who could head up the engineering department?

A. Yes, I made quite a thorough investigation through [40] Mr. Fleming, who had been in the business for a long time. He told me of various people who would be available locally. One of them was a chap named Lou Brittain and I talked to him

(Testimony of H. Leslie Hoffman.)

and another chap whose name I don't recall at the moment, and then he told me about Mr. Harmon, who had been with the Mission Bell at one time and had left them at the time that Schmieter and Fleming had sold out their interest to the Warner crowd, because he didn't think it was a good move, which it subsequently proved not to be, and had gone over with a company called Mitchell-Hughes and evidently about that time he had left Mitchell-Hughes and was available, and so we sat down and discussed the possibilities of what could be done with the company, and evolved a contract.

Q. What was the basis of the contract that was evolved?

A. Well, I looked at that contract the same as I looked at my contract, that is, at that particular time the company had absolutely nothing, not even any prospects, I mean, we hadn't even any prospects of any business, and all we had was a lot of determination and nerve, so I felt, well—I felt that the desirable thing would be to give him some kind of participating incentive premium and to keep the actual stipend down as much as we could. I asked him how much it would take for him to live on, and we discussed a profit sharing program which he didn't want, and I rather concurred with him, and finally evolved on the basis of \$75.00 a week and one percent of the [41] gross sales.

Q. Did you engage the services of Mr. Harmon on that basis? A. Yes, sir.

Q. And he was employed by the company during the year 1942 on that basis? A. Yes, sir.

(Testimony of H. Leslie Hoffman.)

Q. Was he employed by the company during the year 1943 on that basis? A. Yes, sir.

Q. Was the employment of Mr. Harmon on the basis you have indicated discussed with Davidge and Douglas?

A. Very definitely. As a matter of fact, I had Mr. Harmon out to see Mr. Douglas and Mr. Davidge, and of course we went in town and met them, and as a matter of fact, one of his first questions was "Where are you going to get the financing to make the thing work?" So it was not only a matter of selling him but getting Douglas and Davidge's approval. We had to act all together on it.

Q. Did Davidge and Douglas approve of the contract you made with Harmon?

A. Very definitely, yes.

Q. There has been introduced, Mr. Hoffman, as stipulated Exhibit 2, the 1942 sales of the company, and as Exhibit 3 the 1943 sales of the company. I note that on Exhibit 2 [42] 1942 sales indicate commercial radio sales of \$122,799.03, is that correct?

A. Yes, sir.

Q. As contrasted with the total sales of Mission Bell for the year 1941 of \$29,000?

A. Yes, sir, that is right.

Q. And now, there are other contracts which you obtained which show that the total sales of the company for the year 1942 were \$351,950.62. Will you explain the sales other than commercial radio sales, and how the company obtained those contracts, if they were pursuant to contracts, and who performed that service?

(Testimony of H. Leslie Hoffman.)

A. You mean these contracts here, Judge?

Q. All other sales except commercial radio sales.

A. All right. Well, to begin with, well, we had discussed this program prior to Pearl Harbor, not after that, but prior to Pearl Harbor. By the time that we got squared around and ready to do something, of course, Pearl Harbor made us stop and think about what we were going to do, other than commercial radio, and then there were rumors of cutting back production, and things of that kind, and not having any organization of any kind to think of, the first thing we had to do was to get an organization, and of course, this ties in with commercial sales too, and we effected the purchase of the Mitchell Hughes Company's inventory of radio parts, and along with that inventory [43] of radio parts, why, we did acquire a certain small group of people that had been working under Mr. Harmon's jurisdiction building radios, so we moved the Mission Bell, when their rent was behind at Venice Boulevard, why, we paid that up and moved out of the place at Venice Boulevard and moved over to this little place on Broadway Place of some 7,500 square feet and put everything in there. Then we started looking around to see what kind of business we could get, and it was rather a tough job to sell, because Mission Bell, everybody had heard of Mission Bell's financial difficulties. And so we felt that the first thing to do was to go after sub-contract business of one kind or another, so we got a list from the War

(Testimony of H. Leslie Hoffman.)

Production Board of the various people who had prime contracts and I went around——

Q. May I interrupt you a moment there. Was there any further governmental order with respect to the prohibition of the manufacture and sale of radio sets? A. Yes, there was.

Q. During the war. When was that?

A. Frankly I have forgotten exactly what month it was. It was effective the early part of 1942, but it had come out prior to that time, at about February or March, I just don't recall.

Q. Well, if you had continued along the manufacture of commercial radio sets, is it true that this order would have [44] prohibited the continuance of that business, or would you have been able to manufacture still?

A. Well, of course, we could not have built any more radios, because the Government by the L-44-a order absolutely eliminated the manufacture of purely entertainment receivers.

Q. But you were permitted to sell radios that you had already manufactured, is that true?

A. That is right. The order provided that you could complete the receiver if you had the chassis 80 percent complete as of a definite date, and as a matter of fact, as reflected in our picture here, we had some cabinets come in in May and June, and we merely installed the chassis in the cabinets. But to go back to your other question relative to getting other business, I took this list of prime contractors and I went around and worked on it,

(Testimony of H. Leslie Hoffman.)

and I generated a lead over at Bendix Aviation in North Hollywood. Fortunately there was a machine shop, and my first work was to get some small stampings for this machine job, and by helping them and getting them in a hurry, I got acquainted over there. I didn't know anybody prior to the time I got acquainted over there. And they had a problem on a variable condenser which had to be used in what subsequently became known as the Gibson Girl, which was a rescue transmitter that was put aboard aircraft and if the boys were grounded they had this transmitter they put between their legs and cranked it, and it emitted an S.O.S. signal, and they [45] located them that way. The Army had stipulated a tuning condenser that no manufacturer was making and they didn't know where they were going to get it made, and I said I would like to take a shot at it. Well, we had never built variables and didn't know anything about it, but Harmon and one of the boys and myself worked this thing out. We had one lathe in the back of this Mitchell-Hughes Company, and we turned the shafts on the lathe and cut the plates out with tin-snips and made a fairly presentable unit and submitted that as a sample, and fortunately it worked, and fortunately although there were two or three other bidders, we were low in price, so we got a small order for this variable condenser. We immediately ran head on into some very strange problems in that. The way variable condensers are normally assembled, you have the shaft and you have

(Testimony of H. Leslie Hoffman.)

your rotor plates and your stator plates, and they are normally assembled mechanically, but to withstand the vibration of the unit they decided that they had to be soldered in, and Harmon and some of the boys developed a special jig with a head on the iron like that, we actually didn't solder them all in one soldering operation, and that worked out fairly well. As a matter of fact, we continued to be the sole supplier for that particular component right on through the war.

Q. Well, you got then these sub-contracts as well as prime contracts, is that correct? [46]

A. Well, my whole theory in this operation was that we had to start from a standing stop. In the first place, we had outside of Harmon, no engineer. We had no one in the organization of any consequence that knew anything about any of these special things, and in order to get these things to make we had to take what no one else would take, and that was really true all the way through.

Our next job was also with Bendix, and with this same piece of equipment that I mentioned. We had the problem of making this signal stronger. In other words, we had to devise some kind of antenna.

The ordinary fish-pole antenna like an automobile antenna would not be adequate. In talking about it somebody suggested the use of a kite. Mr. Harmon and the boys started out to build a kite, and they decided it had to be made from some component, from some material that had to be strong and light weight, and they got in touch with a com-

(Testimony of H. Leslie Hoffman.)

pany by the name of James Head Company of Dowagiac, Michigan which builds fish poles, metal fish poles, and they sent for some material, and on a Wednesday morning, I recall it quite vividly, they had called us up and wanted 100 of these kites built by Sunday, they had to make a C.F.E.A. shipment, and we went over and they gave us a handful of those rods and a handful of the cloth and gave us a rough print, just one print, and they said go ahead and build it. I stayed at the plant from Monday morning until Sunday night without any sleep and [47] Harmon did about the same thing, and between Harmon and myself and two or three other boys we got the 100 kites out, and subsequently, due to that performance and the fact that we had worked out, in the production of these kites, we had found out a lot of things about them that we could improve on the original design, we subsequently got an order from Bendix for that particular material, and also we continued to be not only—not the sole supplier but one of the suppliers on kites for the balance of the war.

Now, we followed through on that again. We had to go after things that were fairly simple to start out with. I went back east in June of 1942, and while there I finally struck up one contract for the development of an interphone amplifier, which they wanted developed and twelve samples built within a period of 45 days, and I guess they thought we were kind of foolish when we said we could do it, but I took it that day and I flew back to Dayton

(Testimony of H. Leslie Hoffman.)

with the twelve samples 45 days later, and I will never forget it because it was about 101 in that stockade and so I had to carry it all the way from the road up to the lab. But anyway, that shows on this sheet, but it doesn't show the volume. The dollar volume of the job was actually \$1,400. It shows here \$178, and that is what we actually made on it. Due to some strange quirk of bookkeeping they put the residue, what we made on it as the entry rather than the actual value of the product itself. That was what we [48] made on it actually, \$178.

Q. Mr. Hoffman, I intend to cover with another witness the intricate details of those things that you manufactured during 1942 and 1943. Would you tell the court who secured the contracts?

A. Who secured them? Would you like for me to go into detail about that?

Q. Yes.

A. Well, as I say, first I went to San Francisco—

Q. Try to be specific as to dates, if you can.

A. I went to San Francisco in March of 1942 and visited the Signal Corps up there. At that time that was headquarters for the Pacific Coast, and of course they asked me to fill out an application, about how many men we had and how large a place we had and all this and that, which I did, and they said they didn't have any authority to issue any contracts, so then they suggested that I contact Dayton, Monmouth, Philadelphia and Washington—those were the four procurement offices of the

(Testimony of H. Leslie Hoffman.)

Signal Corps at that time—which I proceeded to do, as I say in June. In June I went to Dayton, from the aircraft radio lab over to the Dayton Procurement District and again filled out questionnaires, and I took along some samples of our variable condenser and our kite, and my approach in practically all cases was that we didn't have too much in facilities but we had a lot of nerve and a lot of desire to do [49] something, and all the way along I met a great deal of resistance for the simple reason that, number 1, they felt that we were an invasion zone out here on the west coast, as a matter of fact, in one of my trips, I think it was that one in June, was about the time we had the scare out here of enemy aircraft over Los Angeles and all the ack-ack guns went off and so forth, so that was very much against us. They didn't want to do anything out here, they wanted to chiefly use labor to furnish new aircraft and ships. And number 2, they had some mistaken idea that technical brains stopped when you went across the Mississippi River, I think primarily due to the fact that all the people practically in these procurement districts were middlewest or eastern people. Then another contributing factor was the fact that the people who had to take action didn't use their heads very well and instead of working together they condemned one another rather than take the action, and so forth and so on. So all in all, it was not too easy. At that particular time, as it developed later on, the services were not so much interested in get-

(Testimony of H. Leslie Hoffman.)

ting manufacturers to build complete units as they were in getting someone to built the bits and pieces that made up the complete unit. In other words, their bottle-neck all through the war was the people who built these component parts, it was not particularly the people who built the complete parts, and so realizing that, after I got back in town we got together—then I went on to [50] Washington and went up to the War Production Board and covered all the various places, and about every place I went they said, “we will let you know if there is anything,” and so forth and so on.

The Court: We usually take a recess in the middle of the forenoon. We will be recessed at this time for ten minutes.

(Short recess taken.)

The Court: Proceed.

By Mr. Milliken:

Q. Mr. Hoffman, for the years 1942 and 1943, on your war work, either as a prime contractor or a sub-contractor, were you required to make a dead payment report to the Government Contract Renegotiation Board? A. Yes, sir, we were.

Q. I show you reports for 1942, 1943 and 1944. Did you prepare those? A. Yes, sir, I did.

Mr. Milliken: I should like to offer in evidence at this time, to shorten the testimony, your Honor, and show the contribution to the war effort and what work this corporation did during the year 1942 and 1943, the reports submitted to the Contract Renegotiation Board. I have in mind, besides

(Testimony of H. Leslie Hoffman.)

the materiality of this evidence, that several opinions of the Tax Court emphasized the contractor's contribution during [51] the years that are in question. In other words, whether or not you were a mere assembler of parts or whether you have contributed to the war effort by inventions, or what the nature of your work has been, and it would seem to me that I could shorten the testimony of the witness with respect to what was done if I offer in evidence the report filed with another government agency contemporaneously.

Mr. Crouter: If your Honor please, counsel offered me these reports this forenoon and I have had not opportunity to inspect them. While there may be things I want to go into on cross examination, I have no objection, if the Court please, to the 1942 reports and I have no objection to the 1943 report. I do object to the 1944 report for various reasons. It is wholly subsequent to our year. It comingles and mixes up matters for several of the years. It would not present any kind of a definite or clear picture to the Court or to counsel for briefing purposes as to what happened in 1943, and I think it has no place in the case, it is immaterial and irrelevant, and will not show anything that happened during the taxable year.

Mr. Milliken: May it please the Court, with respect to 1944, I merely sought to introduce that for the purpose that there is an overlap in all of these years, and I would also introduce the orders received by this company during 1942 and 1943, and

(Testimony of H. Leslie Hoffman.)

therefore they can be related to the specific [52] renegotiation report.

Mr. Crouter: I would like to object further on the ground that the 1944 report includes many other things not of the character included in 1943, and it is self-serving, and from various sources, and there are facts in that which are very self-serving and hearsay to a very extreme degree.

Mr. Milliken: I think that goes to the materiality, your Honor, and that if counsel thinks they are self-serving, then he has the privilege of cross examination.

The Court: I will admit the 1942 and 1943 reports at this time and we will see as we go along—you may offer the 1944 later. I think perhaps you can do it later in the trial.

The Clerk: Exhibits 1 and 2.

The Court: Exhibit 1 will be the 1942 report, I take it?

Mr. Milliken: Yes.

The Court: Admitted as Petitioner's Exhibit No. 1, 1943 as Petitioner's Exhibit No. 2.

(The documents above-referred to were received in evidence and marked Petitioner's Exhibits Nos. 1 and 2.)

[Printer's Note]: Petitioner's Exhibits 1 and 2 are out in full at pages 346 to 390 of this printed Record.

(Testimony of H. Leslie Hoffman.)

Mr. Crouter: I might call counsel's attention to the fact that we go through No. 22, I believe, in the exhibits to the stipulation. We have followed the order designated by the court rules, having given the Petitioner's exhibits numbers and the Respondent's exhibits letters, I believe, if that will [53] make any difference in this.

The Court: Well, we sometimes follow through there, but you have a considerable number of exhibits to the stipulation and I think we will start again with our numbers. There should be no confusion in that.

Mr. Crouter: I just wanted to bring that out.

The Clerk: Exhibits 1 and 2.

By Mr. Milliken:

Q. Mr. Hoffman, did you make a list of the orders received in the year 1942 by the petitioner?

A. Yes.

Q. Does the paper I hand you reflect the orders received in 1942? A. Yes, I believe it does.

Mr. Milliken: I should like to introduce that in evidence as Petitioner's exhibit next in order.

The Court: Now, these are what?

Mr. Milliken: These are just the orders, the numbers of them.

The Court: What kind of orders?

Mr. Milliken: Orders for production on prime contracts and sub-contracts.

(Testimony of H. Leslie Hoffman.)

The Court: I don't know what you mean by orders, orders from the government, or are these orders from the company for supplies?

Mr. Milliken: That is correct, your Honor. [54]

Mr. Crouter: Do I understand this is the business of the Petitioner?

Mr. Milliken: Orders received by petitioner in the year 1942 related to sub-contracts or prime contract orders.

Mr. Crouter: I object on the ground that it is wholly inconsistent with our stipulation. It starts with Bendix Aviation and is limited to the amounts, but that was what we intended when we stipulated. They appear to relate to a great many other things besides the petitioner's business.

Mr. Milliken: No, I think you are confused, Mr. Crouter. Our stipulation relates to the amount of money received. Orders may have been received for a million dollars in the year but the actual money received in the year might be fifty thousand.

Mr. Crouter: May I examine the witness on the document, then?

Mr. Milliken: Yes.

Mr. Crouter: Is that permissible?

The Court: Yes, go ahead.

By Mr. Crouter:

Q. Mr. Hoffman, I just want to check on the first exhibit which is there and headed 1942 orders summary.

A. Yes, sir.

(Testimony of H. Leslie Hoffman.)

Q. You will observe on the Exhibit 2 in the case, a copy of which you have before you, it shows that you had signed contracts with Bendix Aviation and the total amount shown for the [55] year was \$209,018.08.

A. Yes, sir.

Q. Are some of those orders included in this exhibit that is offered here?

A. Yes, I should say, sir, this is the date we received the order.

Q. You say "this." What do you mean?

A. This date here, for instance, this is their order number 5703-R.

Q. Is that the Bendix order number?

A. Yes, sir. That is the Bendix Aviation, that is their order number and this is the date of their order.

Q. Is that the order between Bendix and the government?

A. No, between Bendix and Hoffman Radio, or Mission Bell at that time.

Q. I see, and this is the quantity of units ordered in the order and this is the date, as I understand it, of that particular order. Does that all relate to contractual arrangements then between the Hoffman Corporation and Bendix?

A. Yes, sir.

Q. And these were orders that were placed during the period indicated here?

A. Yes, sir. We go right on down here in this fashion (indicating) and then we go to the right here and this is a \$1400 item.

(Testimony of H. Leslie Hoffman.)

Q. How long did it take to complete those orders? [56]

A. Well, some of those orders went on into 1943. Of course, when these orders here—now, you see this order here, this frequency meter order I secured on December 5th, which was the result of a lot of work back there and we actually did not start producing on it until July and August of 1943, because of the intricate amount of tooling and preparation to actually produce it, the engineering involved.

Q. Do I understand, then, that your corporation took these orders and did work on them to subsequent dates from the date of the order?

A. Yes, sir.

Q. How long do they carry through? 1943, don't they?

A. Some of them do. I don't think that I know, to be specific. I am quite sure that all of these orders completed are on it.

Q. Referring to the last column?

A. Yes, here, that was completed in 1943. I don't think those dates are here.

Q. You are referring to that item there for 3,000,000 plus? A. Yes, sir.

Q. That was dated December 5, 1942?

A. Yes, sir, that is right.

Q. Are those posted from your records on contracts you [57] definitely had with Bendix, I understand, on your books and recorded?

A. Those are taken directly from the orders.

(Testimony of H. Leslie Hoffman.)

Mr. Crouter: I withdraw the objection.

Mr. Milliken: I will introduce the 1942 entitled "Order Summary" as Petitioner's Exhibit next in order.

The Court: Petitioner's Exhibit No. 3 is admitted in evidence, being the instrument just referred to by counsel.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 3.)

[Printer's Note]: Petitioner's Exhibit No. 3 is set out in full at page 391 of this printed Record.

Q. (By Mr. Milliken): Did you prepare a similar summary with respect to 1943 orders?

A. Yes, sir.

Mr. Milliken: I offer the same exhibit with respect to the year 1943.

Q. (By Mr. Milliken): And that was compiled upon the same basis as your prior testimony was concerning the year 1942?

A. Yes, sir, it was taken directly from the orders received.

Mr. Crouter: No objection.

The Clerk: No. 4.

The Court: Let the instrument just identified by the witness be admitted as Petitioner's Exhibit No. 4. [58]

(Testimony of H. Leslie Hoffman.)

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 4.)

[Printer's Note]: Petitioner's Exhibit No. 4 is set out in full at page 392 of this printed Record.

By Mr. Milliken:

Q. During the year 1943, who was the president of this Petitioner? A. I was president.

Q. Who was the general manager?

A. I was.

Q. Did you have an advertising manager?

A. No, sir. I handled the advertising, what there was of it.

Q. Did you have a sales manager?

A. No, sir, I handled all the sales.

Q. Did the Petitioner in the year 1943 have any commission contracts with any one except yourself and Mr. Harmon? A. No, sir.

Q. Who was in charge of the personnel?

A. I handled personnel. I handled it through my secretary. Actually the way we handled personnel was that my secretary did some of the detail work and then we had an employment-management group made up of representatives from various groups, and I sat with these people twice a week and we cleared up various personnel problems at that time.

Q. Did you have a public relations manager in 1943? A. No, sir. I handled that. [59]

Q. A production manager?

(Testimony of H. Leslie Hoffman.)

A. Well, I handled—I had charge of all the production, that is I headed all that up. Although we had an actual production manager, he reported directly to me and I coordinated the whole thing.

Q. Was it customary in the year 1943 in your industry to have a Washington representative?

A. Yes, it was. Practically all companies had them.

Q. Did your company have one?

A. No, sir.

Q. What was the basis of employment in the industry in the year 1943 of Washington representatives, if you know?

A. Well, that varied a great deal. One definite case I know of that could be related, companies like the Petitioner, is the case of Taylor, who operated on a 5 per cent basis and whose contract we cancelled. I do happen to know it to be a fact that Taylor had a 5 per cent contract with some other local companies which he was doing.

Q. That is 5 per cent if he made a contract with the government, he was to get 5 per cent of the total amount represented by the contract?

A. Yes, sir, that is right.

Q. Was your corporation given any—

The Court: I want to ask right there, would that be 5 per cent of the total amount received under the contract, [60] or—of the actual amount received under the contract, which I can see how it might be more or less finally than the contract called for?

(Testimony of H. Leslie Hoffman.)

The Witness: It would be based on what was received, your Honor.

The Court: Go ahead.

Q. (By Mr. Milliken): Did your corporation receive any commendation from the armed forces on your work during the year 1943?

A. We did not receive—well, we received a great deal of commendation verbally, but I know we were recommended in 1943 for the Army-Navy E which we received subsequently in 1944. We were the only company on the West Coast to receive an Army-Navy E from the Navy.

Q. Were all of your contracts, either sub-contracts or prime contracts, related to the war effort, were they on a competitive bid basis?

A. Yes, they were, very much so. As a matter of fact, as I explained before recess, we had a great deal of difficulty in getting contracts, and the only contracts we had a chance to bid on were those that major companies in the east could not handle, and on those we had to be a low bidder to get the contract.

Q. Did you receive any cost-plus contracts from the government during the year 1943? [61]

A. No, sir, we did not. We had one contract with the Office of Scientific Research & Development, which is called OSRD, which was a rather intricate job and was tied in with Caltech, and we had——

Q. That is California Institute of Technology?

A. California Institute of Technology, and we had their engineers tied up on that job. It was a

(Testimony of H. Leslie Hoffman.)

very intricate job, and that was for—we contracted to perform certain work for a certain amount of money.

Q. How much was that contract in dollars and cents?

A. As I recall it, it was around two hundred thousand dollars.

Q. What year was that?

A. It was in 1943, and it was also carried into 1944.

Q. Was your company the subject of re-negotiation for excessive profits during the year 1943? A. Yes, sir.

Q. What was the result of your re-negotiation determination?

A. Well, the result was that, number one, they gave consideration to the fact that we had remitted to the services over a hundred thousand dollars voluntarily and——

Q. What do you mean that you had remitted voluntarily a hundred thousand?

A. Well, we had voluntarily reduced the prices of [62] certain articles we were manufacturing and gave them a check for the difference, making it retroactive for the units that we had built.

Q. In other words, do I understand you that you refunded a hundred thousand dollars to the government? A. Yes, sir.

Q. Even though you had a competitive contract?

A. Yes, sir, that is right. As a matter of fact, on one particular contract which amounted orig-

(Testimony of H. Leslie Hoffman.)

inally to around four million we remitted about over a million, subsequently.

Q. Did you set forth to the re-negotiating board in 1943 the compensation which the corporation had paid to you and Harmon? A. Yes, sir.

Q. In the amounts of \$63,000.00 round figures to you and \$22,000.00 to Harmon?

A. Yes, sir.

Q. In the year 1943? A. Yes, sir.

Q. Did the contract readjustment board object to those items of cost? A. No, sir.

Mr. Crouter: If your Honor please, I object to that, in that it is not shown here, this will probably be calling for pure hearsay. It is if the witness is not produced here. [63]

Q. (By Mr. Milliken): Did you handle the re-negotiation? A. Yes, sir.

Q. Did you finally agree as to the amount you should pay incident to re-negotiation?

A. Yes, sir.

Q. Were you familiar with all of the items and costs of your business allowed or disallowed in the year 1943? A. Yes, I was.

Q. Did they allow or disallow as an element of cost yours or Harmon's salary?

A. They allowed it.

Q. They allowed it? A. Yes, sir.

The Court: Let me ask a question here. I don't want to bother you too much, Mr. Milliken, but those contracts upon which revisions were made that you spoke of, one of a hundred thousand and

(Testimony of H. Leslie Hoffman.)

one of about a million, were those contracts made, do you know, before or after April 28, 1942?

The Witness: They were made before or after April 28, 1942?

The Court: Yes.

The Witness: Those contracts were made after April 28, 1942. [64]

The Court: Go ahead.

Q. (By Mr. Milliken): Did your corporation have any dealings with the Salaries Stabilization Unit of the Bureau of Internal Revenue with respect to the year 1943? A. Yes, sir.

Q. Did you submit your contract as well as the terms of the contract with Harmon to the Salaries Stabilization Unit? A. Yes, sir.

Q. Did they approve or disapprove of the salaries?

Mr. Crouter: If your Honor please, I object to that. If it is material, I believe that it should be placed in evidence by the Salaries Stabilization Committee. Personally I have seen nothing of that, I know nothing of it, and I should imagine that you could get a written statement.

Mr. Milliken: We will offer the original letter from them approving it, if counsel desires.

Mr. Crouter: And also the statements submitted in the application?

Mr. Milliken: Yes.

Mr. Crouter: With respect to these salaries.

Mr. Milliken: All the correspondence that you desire.

(Testimony of H. Leslie Hoffman.)

Mr. Crouter: Then I move that the last question [65] and answer be stricken on the ground that it is not the best evidence.

The Court: We will strike the last question and answer.

Mr. Milliken: We will come back to that.

Q. (By Mr. Milliken): Can you estimate for the Court the number of hours that you worked during the year 1943 for this corporation, on an hourly basis?

A. I would say that it would average between fourteen and sixteen hours a day.

Q. Did you organize or did you have any relation to the electronics industry that was organized on the Pacific Coast?

A. Yes. One of the main problems in securing contracts for not only our company but other contractors in this area for the items we have produced and other places have, that we were in a number one labor area here, and the contractors of both the Army and the Navy, or the official contractors had notified their contracting officers not to place contracts in a number one labor area. We had that problem, and I was instrumental in getting the various people together here dealing in electronic equipment, both in the Los Angeles area and in the San Francisco area, to form an association called West Coast Electronic Manufacturers Association, of which I was elected president, and we got together vital statistics [66] showing for one, the location of the plants, the facilities of the plants, the labor supply, the know-how they had

(Testimony of H. Leslie Hoffman.)

in these respective plants, and at that time as I say we were having great difficulty, everyone was having difficulty getting contracts out here. Some of the large ones, like Gilfillan, and Packard Bell, were fairly well off, but some of the smaller ones were not doing so well, including ourselves, and we got this together and I took that together with some other information back to Washington and covered it for the entire area, and the result of that was that in 1944—one of the biggest things we had to develop was suppliers for component parts, and in 1944 they produced electronic equipment at the rate here on the Coast of two hundred and fifty million dollars a year, which was ten or twelve times what we started out doing.

The Court: Counsel, in order that I may follow along, I would like the significance of a number one labor area.

Q. (By Mr. Milliken): Will you explain number one?

A. Yes, sir, your Honor. All the various sections of the country were classified by the War Man Power Commission in Washington, and they were number one, two, three and four labor areas. Number One was where there existed a critical shortage of labor, and the Man Power Commission got together [67] with the various services and agreed that they would not put contracts in those areas that showed a critical labor shortage.

The Court: That is sufficient, I think.

Q. (By Mr. Milliken): You stated that they had no Washington contact man representing this

(Testimony of H. Leslie Hoffman.)

corporation. Who did represent the corporation in Washington?

A. I represented the corporation. I got various contracts back there and we subsequently sent a man back to Washington to handle the contracts once the contracts were secured.

Q. Was it necessary for the corporation to secure any loans for the operation of its business during the year 1943? A. Yes, sir, it was.

Q. Did they secure such loans? A. Yes, sir.

Q. From whom?

A. In 1943 we secured it from the California Bank.

Q. Did the bank require any endorsement other than that of the corporation?

A. Yes, sir, they did.

Q. To guarantee those loans?

A. They required the endorsement of Douglas, Mr. Davidge and myself. [68]

Q. Did you so endorse the loan?

A. Yes, sir, we did.

Mr. Milliken: I believe that it is all, Mr. Crouter.

The Court: Did you borrow any from the government?

The Witness: No, sir.

Cross-Examination

By Mr. Crouter:

Q. Did you secure any loans at all, Mr. Hoffman, in 1942? A. Yes, sir, we did.

Q. I believe you testified just previously you received them in 1943?

(Testimony of H. Leslie Hoffman.)

A. I believe the answer was that we received government loans in 1943.

Q. In 1942 you also secured government loans?

A. No government loans. We had no government loans at any time.

Q. They were bank loans then?

A. They had a bank loan. Now, that word borrow and loan—there is a question of terminology on the borrowing and loan. The picture there is that you borrow directly from the bank and that the government guarantees 90 per cent of it.

Q. How much was your first loan?

A. Frankly I don't recall. [69]

Q. About how much?

A. It was around two hundred thousand.

Q. In 1942? A. Yes, sir.

Q. About how much was it in 1943?

A. Well, we had a loan of \$400,000.00 from the California Bank, and the nature of the contract that we secured in the latter part of 1942, this frequency meter, was such that it appeared that we would have to have to secure a loan of \$750,000.00, so subsequently, I believe it was the latter part of 1943, we transferred our loan from the California Bank to the Bank of America, due principally to the fact that the California Bank could not loan up to \$750,000.00 based on a government warranty on their capital and so forth. So that to answer your question specifically, we had a loan the latter part of 1943 for \$400,000.00, which we didn't use, but that was the total of it, and the latter part of 1943, \$750,000.00.

(Testimony of H. Leslie Hoffman.)

Q. You mean you actually made a loan for that much or was it merely authorized?

A. It was authorized.

Q. How much did you actually secure from the Bank of America? What is the total amount in 1943?

A. I would have to guess at that, sir. I would guess——

Mr. Milliken: I don't believe—I don't mean to [70] interrupt—that he said the Bank of America in 1943. I understood you to say you spoke to them in 1943.

The Witness: We made arrangements to—I would have to check the records to give an accurate answer.

Q. (By Mr. Crouter): You did borrow at least four or five hundred thousand dollars in 1943, did you not? A. I would say that we did.

Q. And the banks in turn were backed up by the federal government to the extent of a very large percentage, possibly as much as 90 per cent of such loans, were they not? A. Yes.

Q. You know that that was backed up by federal money and guaranteed?

A. That is right.

Q. That is the way they did business?

A. That was the nature of the loan.

Q. I suppose that was necessary because you were undertaking large orders and commitments, and you had your cost factor and your labor factor, which were much beyond any regular financing that your company could have handled?

(Testimony of H. Leslie Hoffman.)

A. That is right. We were in the same position as 95 per cent of the other companies.

Mr. Crouter: May I see the last exhibits offered, particularly the re-negotiation reports. [71]

The Clerk: Three and four. Do you want this too?

Mr. Crouter: Yes, please. Thank you.

Q. (By Mr. Crouter): Before going into this, Mr. Hoffman, I would like to ask you a few questions regarding some of the early background that you stated here. You don't mind telling the Court how old you are right now, do you?

A. No, sir. 42.

Q. 42. What course, if any, did you specialize in in the Albion, Michigan, college?

A. I had a major in both business administration and philosophy.

Q. Studied no engineering at all?

A. I took the normal science degrees of physics and chemistry and things of that sort.

Q. What degree did you receive there, if any?

A. I received a regular——

Q. Bachelor of Arts?

A. Bachelor of Arts degree.

The Court: I don't want to be confused on that. Perhaps the witness used the word degree when he meant studies. You said you received the regular physics and science degrees.

The Witness: I misstated that. I took the regular courses. That is right. [72]

(Testimony of H. Leslie Hoffman.)

Q. (By Mr. Crouter): There were certain prescribed courses such as math and science that you took?

A. There was a certain amount of science.

Q. And a language or two?

A. That is right. I was playing football. I had to have all my credits.

Q. What year was it you graduated?

A. 1928.

Q. 1928? A. Yes, sir.

Q. That is when you received your A.B. degree? A. Yes, sir, that is right.

Q. I know this will tax your memory a little bit, but let's go down through and tell the Court the best you can recall the, approximately, amount of weekly, monthly or annual compensation you received from these various firms that you testified to. First let us take the Sparton Radio Company there at Jackson. Do you remember at what you started as stock clerk?

A. Yes. I think I started at 50 cents an hour.

Q. 50 cents an hour? A. Yes, sir.

Q. Worked an 8-or 9-hour day or was it 10 in those days? [73]

A. Well, we worked 10 hours, then I went on and had a 12-hour shift.

Q. About how long were you there in 1928 on?

A. Now, let's see. I went there in June of 1928, when I got out of college, and I was there about eleven months.

(Testimony of H. Leslie Hoffman.)

Q. Of course you didn't have a great deal to do with stepping up of production there, you had no function then as stock clerk?

A. I most certainly did. I was not stock clerk at that time. I was line foreman at that time.

Q. What did you do as line foreman?

A. Well, I had about thirty girls on the line, I started out with thirty, I had to direct them and had to show them how to build the radios, I was building what is called the RF amplifier, I was the line foreman and all of the production on that particular line was under my jurisdiction. I was under the jurisdiction of the factory superintendent.

Q. What is the most you received there during that period?

A. Well, I think the most that I received there was probably sixty or seventy-five dollars a week, which was big money in those days, for my age.

Q. Was that just an assembly operation or did they actually manufacture some of the radio apparatus that went [74] into the final product?

A. Well, in those days, twenty years ago, the radio manufacturers manufactured more than they actually do now. As a matter of fact Sparton built their own tubes, they built their own coils, and they built most all of the parts that went into the sets. Of course, I grew up in the manufacturing business back in Michigan. I started in the factory when I was 13 years old, so I had more actual manufacturing savvy than the experience would indicate.

(Testimony of H. Leslie Hoffman.)

Q. What kind of horns was it you referred to that they manufactured?

A. Electric horns, automobile horns.

Q. Mostly automobile horns, horns for automobiles?

A. Have you heard the slogan, "Safety first, sound your Klaxon"? That was their slogan.

Q. When was it that you went to Reynolds Spring in Jackson?

A. I think in either April or May of 1929.

Q. What was the financial arrangement there?

A. As I recall, it was between 80 and 90 cents an hour, something like that. It was an hourly rate.

Q. As I recall, you said they manufactured lighting systems, stadium lights and things of that character?

A. Yes, plus the average molding devices, they made toggle plates for electrical outlets and things of that kind. [75]

Q. Did they have anything at all to do with radio manufacture or assembly?

A. No, sir, they did not, no, sir. Of course, I had charge of their machine shop. I had charge at the time I was there of the mechanics. That was very largely mold mechanics or assembly.

Q. I understood you stayed there for less than a year and came to California some time in the year 1929?

A. Yes, sir, that is right.

Q. What was the business of the Ellis-Bishop Company that you mentioned?

A. That was an investment house.

(Testimony of H. Leslie Hoffman.)

Q. Where were they located?

A. Pasadena.

Q. Just regular security investment?

A. Yes, sir, just investment.

Q. Counsellors and so forth?

A. Counsellors, salesmen.

Q. Did they have accounts with brokerage companies?

A. Yes, they were connected with Banks-Huntley Company here in Los Angeles.

Q. Banks-Huntley, a large concern downtown here?

A. Yes, sir. They were Pasadena agents for Banks-Huntley.

Q. You say it was only about 60 days you were with them? [76]

A. That is right.

Q. What was your compensation there?

A. One hundred dollars a month plus what I could sell.

Q. Then with the Broadway Department Store as a trainee, you were being trained as to some of their operations?

A. I was being trained for a buyer's position.

Q. How long did you stay there?

A. Oh, I didn't stay there very long. I stayed there about 90 days I think.

Q. Did you receive some compensation while you were in training?

A. Yes, sir, I think it was one hundred and twenty-five a month, I think something like that. It was very small.

(Testimony of H. Leslie Hoffman.)

Q. Then you left there early in 1930 and went with Firestone? A. Yes, sir.

Q. What was the location of the Firestone place?

A. 2525 Firestone Boulevard, South Gate, or Huntington Park, I believe it is.

Q. That is in the suburban area down south of Los Angeles proper? A. Yes, sir.

Q. About what, eight or ten miles down?

A. I would say it was eight miles. 85th Street.

Q. In relation to 85th Street South, that is about due south of the City of Los Angeles?

A. Yes.

Q. You went in there as clerk, you say, at what compensation?

A. I don't remember exactly, but it was very small, I know that.

Q. Let us have your best recollection?

A. I would say it was around a hundred and thirty dollars or so.

Q. Any commission?

A. No commission. Just straight salary.

Q. Straight salary? A. Yes, sir.

Q. And you continued there until what year?

A. I continued with Firestone at the factory there from 1930 to 1935, at which time I still stayed with Firestone but I went to Portland, Oregon.

Q. Well, you went with the Firestone at Portland? A. Yes, sir.

Q. And how far did you get in the way of compensation during that period when you were with

(Testimony of H. Leslie Hoffman.)

Firestone then? What is the top that you finally arrived at with Firestone?

A. Well, I think the top I arrived at was three hundred dollars a month. [78]

Q. Was that in this area or around Portland?

A. It was this area and Portland, and of course in Portland on the company's program in the stores I had a certain percentage of the profits.

Q. Then that was three hundred dollars a month, and that was your total compensation up to about 1935?

A. Yes, sir, that is right.

Q. That is with Firestone?

A. That is right.

Q. With Firestone you, as I recall your testimony, handled a little bit of everything from tires to batteries and various automobile equipment and accessories, did you not?

A. Yes, sir, I handled the sales department of everything except truck tires and automobile tires. That was covering the eleven Western states. Of course, that was the middle of the depression, and I was not paid very much money those days.

Q. Was the place at 2525 Firestone Boulevard the head main manufacturing or production office of Firestone in this area?

A. The way they worked it they have two main offices, one in Akron, one in Los Angeles. Los Angeles manufactures tires here, and at the same time all of the sales in the eleven western states are under the Los Angeles jurisdiction. [79]

(Testimony of H. Leslie Hoffman.)

Q. Most of their real manufacturing of Firestone was actually done at the Akron plant, was it not?

A. No, sir, it was not. We built batteries out here and we built automobile tires and truck tires. We built mechanical rubber goods out here.

Q. I see. You were chiefly connected with the sales part of the business, were you not?

A. I had the sales, I had the scheduling to the factory, I had the training in the field, I had to set up the service departments, I had to start all the workers on those things.

Q. Just tell us from the time you went there until you left, various exact operations, I mean what you actually did to supervise?

A. I will be glad to, but it will take some time. If you want to take the time—

Q. For instance, I am referring to this one between 1932 and 1933 when you were over five different departments. Do you mean to tell the Court that you personally had charge of five different departments and you took them over?

A. Yes, sir, I mean to tell you that exactly.

Q. What were those departments?

A. In the first place, they had a man by the name of Captain Packham that had charge of aircraft tires, who had them manufacture twice as many aircraft tires as they would ever [80] be able to sell to airplanes, and so they let Captain Packham go and gave me the job of selling these aircraft tires, which I proceeded to do.

(Testimony of H. Leslie Hoffman.)

Q. You stated you were put in charge—

A. Do you want me to follow on with the rest of this?

Q. Yes, go ahead, if you haven't finished your answer. Tell us what title you held and what you actually received for it as best you recall.

A. Well, I was sales manager of the allied products division, that was my title, but I started—that was again a progressive field. I started out the first time, I became department head there, I had charge of battery sales. Then I became battery truck man and took over the truck line, before a chap by the name of Harold Keller had it, and then I became the allied products sales manager with all their other accessories, and a chap by the name of Norman Fawcett had it.

Q. Do you remember what your compensation was, so we get that part of it? A. Yes.

Q. What was it?

A. I was making two hundred and fifty dollars and I got a raise to two hundred and sixty dollars, two hundred and seventy dollars, and a 10 per cent raise came along in there some place. [81]

Q. That is from two hundred and fifty to two hundred and seventy per month? A. Yes.

Q. That you were getting in 1933?

A. Some where along in there, I have forgotten where it was, as a matter of fact they had two raises. I dodged one and got the other.

Q. Was it before or after that time you stated you were in charge of the oil company business for a period of time?

(Testimony of H. Leslie Hoffman.)

A. That was approximately 19——let me think a minute on that. That was the early part of 1943.

Q. 1943?

A. Yes, or 1933, I am sorry, because I was holding a sales meeting with the Union Oil people in Walla Walla, Washington, when the banks closed. I remember that.

Q. You mean the oil company business was selling accessories like tires at its stations, is that it?

A. Well, just to outline in detail, Firestone was interested in extending the distribution of their products, and we got the Union Oil Company interested in selling Firestone tires in all their stations, and we got that tire opening and then I developed this unit for merchandising batteries and spark plugs in these various stations, because it was a small, compact unit they could get into a small space, which [82] was required in a service station, and due to my development of that I was put in charge of the Union Oil account for a period of time as well as the Texas account. In those days we did a little bit of everything. It was not too highly specialized.

Q. Did the Firestone company at that time have various parts retail stores? A. Yes, sir.

Q. In different towns? A. Yes, sir.

Q. Did you have anything to do with them or was that something different?

A. Yes, of course, I had something to do with the one store when I went to Portland, and on the other stores, those stores again, it is a rather con-

(Testimony of H. Leslie Hoffman.)

fused picture, because part of the time those stores are under the district offices and part of the district offices were directly under our jurisdiction, and part of the time their stores answered to a store manager in the territory who was not in the sales department function, so part of the time we had something to do with those stores and part of the time we didn't have.

Q. That was just incidentally though, wasn't it?

A. No, it was not incidental. Just to give you a factual answer, I would go to Portland, Oregon, when I was working in that territory for the factory, and I would sit down and [83] have a sales meeting with the salesmen and check the sales, and then I would go with the salesmen and check on their accounts, or go and talk with some of the customers, and I would go to the stores and go to the battery department and check over what they were doing to get retail sales. It was part of my duties when I was in the field to see what I could do to help out those retail stores.

Q. Referring to this statement, the total sales of all these departments were about four hundred or five hundred thousand dollars, I believe you referred to the five different departments?

A. Yes, that is it.

Q. What area did that refer to?

A. Elevent western states.

Q. Do you mean to say you had supervision over all of them?

A. Yes, sir.

Q. So that that was the result of your work there?

A. That is right.

(Testimony of H. Leslie Hoffman.)

Q. And then I believe, referring to your testimony, that some time during the next eighteen months you took in roughly three to three and a half million dollars?

A. That referred to those departments that I have enumerated.

Q. You mean those same branches or departments? [84]

A. That is right.

Q. And you mean that was all under your jurisdiction?

A. That is right.

Q. What was your title then when you took in the three and a half million dollars you referred to?

A. That was at the time I had the title of manager of the allied products department.

Q. How many stores did you have up and down the coast that the three and a half million would come from?

A. It was not entirely stores. It was Firestone dealers as well as stores. For instance on mechanical rubber goods I developed a deal, just to give you a side glance at it, I developed a mechanical gun which sold and we developed a little demand for it, and then I developed five hundred and fourteen new retread outlets for retread material.

Q. Was that the position you held until you went to Portland?

A. Yes, sir, that is right.

Q. Then you went to Portland as manager of a store up there?

A. As store manager, yes, sir.

Q. That was in 1935?

A. Yes, sir, that is right.

(Testimony of H. Leslie Hoffman.)

Q. What was your compensation there?

A. I kept the same salary I had at the factory.

Q. And that was what?

A. As I recall, it was around two hundred and seventy or two hundred and eighty dollars, something like that up there.

Q. Any commission or bonus?

A. We had a bonus, yes, in the store.

Q. What per cent bonus?

A. We had a 10 per cent bonus, 10 per cent of the profits.

Q. 10 per cent of the net profits of your store?

A. Yes, sir, that is right.

Q. Do you remember about your total compensation you made we will say beginning 1935, what amount of commission you got out of the store at Portland?

A. Well, I think my compensation that year was around thirty-eight hundred dollars.

Q. Let's take the next year. You were still with the Firestone in Portland in August, 1936?

A. Yes, up until the last three or four months of 1936.

Q. In the same position? A. Yes.

Q. And compensation about the same?

A. Yes, sir, except that I didn't have the last three or four months' income.

Q. In 1937, when you were with the Electrical Distributing Company in Portland, what was your compensation there? [86]

A. My compensation was about the same amount, I think around two hundred and seventy-

(Testimony of H. Leslie Hoffman.)

five dollars, but I was supposed to have a bonus program on the sales which did not materialize.

Q. Never received any bonus?

A. A very small one.

Q. How long did you remain there?

A. Just a year.

Q. One year? A. Yes, sir.

Q. Was that mostly work in and around Portland or did you do some driving?

A. No, sir, I was doing driving as well.

Q. Oregon and other places?

A. I beg pardon.

Q. Oregon and Washington and other territory?

A. It was just the State of Oregon.

Q. Oregon alone? A. Yes, sir.

Q. Then was it 1938 that you first went with this Lumidor company? A. No, sir, 1939.

Q. How long did you stay with the Electrical Distributing?

A. I was there during the year 1937. [87]

Q. What did you do in 1938?

A. I had a try at starting a manufacturers' representative business of my own. I sold various lines, as I mentioned before, washing machines and refrigerators, lamps, a little bit of everything.

Q. Anything but radios?

A. Yes, I had a radio line.

Q. They were other lines that you had worked previously in and you were just selling on a commission basis?

(Testimony of H. Leslie Hoffman.)

A. Yes, sir, I was selling on a commission basis. Then also I was secretary of the oil heater association here in town, which has a program of developing oil heater sales here.

Q. As I understand, in 1939 you went into the Lumidor company?

A. In 1939, yes, I handled the sales for Lumidor, and I interested them in the manufacture of this fluorescent table lamp to start out with, and then I branched out from that into other things.

Q. What was the full name of the Lumidor company?

A. Lumidor Manufacturing Company.

Q. Where was that located?

A. Located on Marengo Street, Alhambra.

Q. A little city up northeast of Los Angeles proper?

A. Yes, that is right. [88]

Q. Just on the edge of the city limits?

A. That is right.

Q. And is this lamp that the Lumidor Manufacturing Company produced there, is that something that you patented or invented or what was it?

A. No, it was not anything I patented. In the first place, Lumidor was manufacturing floor lamps for the Edison Company, and they had the facilities to build the lamps, and I took this lamp that I was selling from the east and told the manager of the Lumidor what I thought it should be like, and we sat down and worked out a design of a lamp, and then I went out and sold it.

Q. You had the idea that they developed and produced?

A. I beg pardon.

(Testimony of H. Leslie Hoffman.)

Q. They developed and manufactured.

A. It was not exclusively my own idea. It was a combination of their ideas and my ideas. In other words, I had an idea of what I wanted functionally and they had an idea how to best produce it, so we got our ideas together.

Q. What was your compensation at the Lumidor company?

A. 10 per cent sales commission.

Q. Do you remember about what you got in 1939 or 1940, whatever it was?

A. 1940 I made around forty-seven hundred dollars, as I recall it, or a little over. [89]

Q. In 1939 can you tell about what you made?

A. 1939 we were just getting started, and as I recall it was around nineteen hundred or something like that.

Q. Then when was it that you left Lumidor?

A. I left Lumidor the latter part of 1940 I believe.

Q. What was the highest position and the highest compensation you received from Lumidor?

A. Well, speaking of positions, I was given the title of sales manager of the Fluorescent products. Actually I was the sales manager and the sales force, and as far as compensation, I believe I covered that previously.

Q. Well, let's carry it forward from 1940. Did you still continue with Lumidor in 1941?

A. No, not that I recall.

Q. You were with the Peerless company, wasn't it?

(Testimony of H. Leslie Hoffman.)

A. Yes, sir, Peerless Electrical Manufacturing Company.

Q. What did you actually do there?

A. Well, there again I was the sales manager and the sales force and everything else.

Q. What was their business?

A. They were manufacturers of transformers.

Q. What do you mean, radio?

A. Radio transformers, that is radio sound transformers.

Q. What was your compensation basis there?

A. 10 per cent commission. [90]

Q. How well did that turn out?

A. It turned out very well.

Q. About how much?

A. Well, my income was thirteen thousand dollars in 1941?

Q. 1941? A. Yes, sir.

Q. I just wanted to check on something here. Are you talking about the total amount?

A. I am talking about my gross income.

Q. I see. That does check with your tax return, showing thirteen thousand six hundred sixteen dollars. How long was it you stayed with the Peerless company?

A. I stayed with them until the spring of 1942. Actually up to the last of 1942 after I had consummated this deal with Mission Bell. I merely had the job of training somebody to take over my work, and I had those orders on hand from which I received a commission, then I resigned from my

(Testimony of H. Leslie Hoffman.)

position there and devoted all my time to Mission Bell.

Q. Where was the Peerless Production headquarters located?

A. On McKinley Avenue. As I recall it was in the 6,000 block on McKinley Avenue.

Q. In Los Angeles?

A. In Los Angeles. [91]

Q. Was the thirteen thousand the highest you received from the Peerless company?

A. Yes, sir.

Q. What did you actually do there with respect to your duties of supervision and so forth? What were all the titles and positions you held with the Peerless Production Company?

A. Well, titles and what I did were two different things.

Q. Well, tell us exactly what you did.

A. The title I had was sales manager. What I did was to go to the established radio—in the first place, Peerless had never sold anyone except radio jobbers and radio manufacturers, so they had no contact with the electrical trade at all. I went out and showed the electrical jobbers, the fluorescent manufacturers and established a business on this fluorescent ballast or transformer, then in addition to that, due to the pressure of the increased business, they had internal problems and they had a lady running the business and she was having trouble with personnel methods and so forth, and I stayed inside and contributed as much as I could

(Testimony of H. Leslie Hoffman.)

to help out on that phase of it, and during one period I took over the route sales as well and the route agents that they had on sales commissions were answerable to me, although I didn't get anything out of it. [92]

Q. And you did a good deal of traveling in that time, too, didn't you?

A. Yes, sir, and I paid my own expenses.

Q. Then, in 1942 did you cease all your connection with the Peerless? A. Yes, sir.

Q. That was the Peerless Electrical Products Company. That was after you got into the Mission Bell company and this Hoffman Radio Manufacturing Company? A. Yes, sir.

The Court: Now, will you indicate to me, Mr. Crouter, when you have finished that particular line. It is about time to adjourn, but we will finish that particular line.

Mr. Crouter: This would be convenient, because I was just going into the Mission Bell and Hoffman right now.

The Court: We will be recessed at this time until two o'clock.

(Whereupon, a recess was taken until 2:00 p.m. of the same day.) [93]

Afternoon Session—2:00 p.m.

The Court: Proceed.

Whereupon,

H. LESLIE HOFFMAN,

called as a witness for and on behalf of the Petitioner, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued)

By Mr. Crouter:

Q. Mr. Hoffman, I would just like to have you identify the 1941 return, if the Court please, I believe I will offer it later. That is the original of your 1941 federal income tax return, isn't it?

A. Yes, sir.

Q. Now, referring to the time when you became interested in the Mission Bell Radio Manufacturing Company, the name of which was later changed to the Hoffman Radio Corporation, Mr. Hoffman, please tell the Court in a general way just what the plant and property and tangible assets of that corporation consisted of at the time when you became interested in it in a definite way we will say about December 4, 1941.

A. Well, covering item by item, personnel: we had three employees, which consisted of the president of the company, the shipping clerk and the stenographer. The plant itself was approximately 7500 square feet, which was a converted [94] garage.

Q. What was the location?

(Testimony of H. Leslie Hoffman.)

A. 833 Venice Boulevard, Los Angeles.

Q. I see. All right, go ahead and tell us a little more about what the property consisted of.

A. The property consisted of a converted garage and of course a small office and display space, a stock of materials which contained as I previously testified, one hundred chassis that were completed and twenty or so complete units.

Q. Radio units?

A. Yes, complete radio sets.

Q. Was that the portable table type?

A. No, some of them were—there were about ten combinations and about ten table model types.

Q. I see.

A. And the balance of the stock was a miscellaneous assortment of components that had been accumulated over quite a period of time, and this miscellaneous assortment of components was put on sale, as I previously testified, and sold for a very small amount of money. Their assets were actually much less than their liabilities. They owed quite a considerable sum of money for the company, as I recall it was in excess of ten thousand dollars, and the other thing that they had, which of course was nothing that was an asset unless it was turned into an asset, that was a license from the Radio [95] Corporation of America to manufacture radios.

Q. Do you know how long the corporation had held that license with the R.C.A., as it is referred to?

A. As I recall, they secured that license in 1936.

Q. Referring to the statement about 7500 square

(Testimony of H. Leslie Hoffman.)

feet, did you refer to the land total, or is that the building area?

A. That is the building area.

Q. Did they own their building?

A. No, they rented it.

Q. They rented it? A. Yes, sir.

Q. They didn't own any real property then?

A. No, sir.

Q. That is correct? A. Yes, sir.

Mr. Crouter: If your Honor please, to keep our exhibits in order here, I would like to offer at this time a few of those documents that were included in the stipulation.

Referring to the tax returns involved. There is one paragraph of the stipulation that refers to the 1943 returns of the Petitioner as Exhibits A and B, A being the Form 1120 income and declared value excess profits return, and B being the excess profits tax return for 1943. I would offer those at this time as part of the stipulation.

The Court: Respondent's Exhibits A and B are [96] admitted in evidence.

(The documents above-referred to were received in evidence and marked Respondent's Exhibits A and B.)

[Printer's Note]: Respondent's Exhibits A and B are set out in full at pages 414 to 450 of this printed Record.

By Mr. Crouter:

Q. I show you the 1941 return of the Mission Bell Corporation. Please examine that and state

(Testimony of H. Leslie Hoffman.)

whether that is your signature as president and that is the original return?

A. Yes, sir, it is.

Mr. Crouter: I offer this as Respondent's exhibit next in order.

The Court: Admitted in evidence as Respondent's Exhibit C, by this you mean the 1941 return just identified.

(The document above-referred to was received in evidence and marked Respondent's Exhibit C.)

[Printer's Note]: Respondent's Exhibit C is set out in full at pages 451 to 465 of this printed Record.

Mr. Crouter: Yes, that is the 1941 income and declared value excess profits tax return of the Mission Bell Radio Manufacturing Company. To keep the record clear, I now offer the 1941 original return of Herman Leslie Hoffman, Form 1040, which is the one we previously identified.

The Witness: Yes.

Mr. Crouter: As Exhibit D.

The Court: Admitted in evidence as Respondent's Exhibit D.

(The document above-referred to was received in evidence and marked Respondent's Exhibit D.)

[Printer's Note]: Respondent's Exhibit D is set out in full at pages 466 to 472 of this printed Record.

(Testimony of H. Leslie Hoffman.)

The Witness: That did not include my wife's income, being community property tax.

By Mr. Crouter:

Q. Yes, I appreciate that, and it so shows on the schedules? A. Yes.

Q. Mr. Hoffman, I show you Exhibit C in evidence, this being the 1941 return of the old corporation, if I may refer to it as such, and I call your attention to the items under assets, one item being R.C.A. license contract, carried by the company as an asset with the value of \$17,500.00?

A. Yes.

Q. Have you anything else that you can tell the Court about the value of that and how it was regarded as a part of the valuable property of the corporation, if it was?

A. Yes, I think I might add something to it. In the first place, going back historically in the radio business, at one time or one era of the radio manufacturing business there were a good many different patents, and after the First World War those patents were pooled under the Radio Corporation of America so there would be less confusion in the manufacturing of these units. That didn't actually work out, but here on the coast in the early part of 1930 up until approximately 1941 there were only three licensees, main licensees on the coast. That was Gilfillan, Remmler, and [98] Mission Bell. Gilfillan had the most valuable license, in that he could license other manufacturers to build radios and collect the license from those manufacturers.

(Testimony of H. Leslie Hoffman.)

Q. Is that Gilfillan Brothers you are referring to? A. Yes, sir.

Q. Then did Gilfillan manufacture under such license about the same time that Mission Bell did, we will take the period of the end of 1941?

A. Well, of course they did up until 1940, but as I recall that, Gilfillan had a fire in 1940 and they were out of business for a period of time until they rebuilt their plant, which was, I believe, the latter part of 1940. However, as far as the R.C.A. license is concerned, at the time we took over Mission Bell R.C.A. had loosened up considerably concerning licenses, and as an example Mitchell Hughes had a limited license to build a radio-phonograph combination, and the license that Mission Bell had called for a minimum payment of \$2500.00. That was subsequently waived, but at the time we took over we didn't know whether it would be waived or not. Mitchell Hughes, however, had only a minimum amount to pay, and there were three or four other manufacturers in town who had limited licenses, Packard Bell being one of the major manufacturers I believe got a license about that same time for nothing, so it was hard to estimate at just what the value of the license was, but it had no transferrable value. [99]

Q. That was one of the real factors that influenced you and Messrs. Davidge and Douglas in taking over Mission Bell even with some liabilities, wasn't it?

A. I would answer that question this way, that the reason we rehabilitated Mission Bell instead

(Testimony of H. Leslie Hoffman.)

of letting it go bankrupt was if we had let it go bankrupt it would have automatically lost their license.

Q. Well, isn't the answer to my former question that it was one of the real factors, because at that time you had anticipated going ahead with radio manufacture for some time?

A. That was one of the assets that we saw in the company.

Q. And the Mitchell Hughes matter you referred to came along a little bit after December 4, 1941, did it not? A. Yes, sir, it did.

Q. That came along—will you tell the Court a little more about the acquisition of the business of Mission Hughes along with Mr. Harmon's position there. You took over some of his plant as I understand your testimony and the manufacturing he had previously done, into your organization, tell about when that happened and so forth.

A. Well, that happened in February.

Mr. Milliken: May I suggest that you get the name right, Mr. Hoffman. I believe Mr. Crouter misunderstood the name. Mitchell.

The Witness: Yes, that company Mitchell Hughes was [100] a manufacturer that had been manufacturing high cost or high priced radio-phonograph combinations, that had been started by a gentleman by the name of Alex Hirsch who had financed it, and Mr. Hirsch had started it, and Mr. Harmon was operating it until he had left, and Mr. Hirsch passes away and his son didn't want to operate the business, and through Mr. Har-

(Testimony of H. Leslie Hoffman.)

mon I became interested in it and we bought the Mitchell Hughes inventory, its name, and took over the lease they had on their building, and we subsequently closed up the quarters of the Mission Bell, very shortly thereafter, and consolidated the operation there at Mitchell Hughes.

By Mr. Crouter:

Q. Can you give us a little more definite date as to when you bought Mitchell Hughes?

A. I would prefer to look at the records and give you that date.

Mr. Milliken: May I ask which more definite date do you refer to as what you want, Mr. Crouter?

Mr. Crouter: I mean when the Petitioner corporation bought the Mitchell Hughes assets and so forth.

By Mr. Crouter:

Q. It was some months after December, 1941, is that right?

A. As I recall it was in February, but as I say I can check the date and find out for you. [101]

Mr. Milliken: February of what year?

The Witness: February, 1942.

By Mr. Crouter:

Q. Do you still have that stipulation before you? Well, I can show you mine here. Will you kindly turn to the stipulation exhibits, there, Mr. Hoffman, and particularly to Exhibit 4, that is the first photostat in there, Exhibit 4, if the Court please is the agreement between Mr. Hoffman and Mr. Schmieter regarding the acquisition of cer-

(Testimony of H. Leslie Hoffman.)

tain stock, being 110 shares by Mr. Hoffman. Now, I notice the reference in there on page 4, Mr. Hoffman, the first full paragraph of that exhibit which I will read to you. You will notice, Mr. Hoffman, a reference to dividends. The language I wish to ask you about is, "Hoffman shall in any event at all times when he is not in default under the terms and conditions of this agreement be entitled to receive, have and take all dividends which may be properly declared upon such stock; provided that in the event of default" and so forth. And now at that time, you see that agreement is dated December 1, 1941, how far had you contemplated going in acquiring all of the stock of the old stockholders, you or any one else with you?

A. Our plan at all times was to acquire all of the stock.

Q. Wait, let me ask the same thing in a different way: [102] When did you and Mr. Davidge and Mrs. Douglas first have any written agreement regarding this matter? Is that one in evidence the only one?

A. You refer to the written agreement dated—

Q. Exhibit 7, that is the one dated December 9, 1941. You may wish to examine it. Is that the only agreement in December between you and Mr. Davidge and Mr. Douglas?

A. These agreements, all of these agreements, were written up at the same time and—

Q. By "these" you mean that between you and the old stockholders and you and Mr. Douglas and Mr. Davidge?

(Testimony of H. Leslie Hoffman.)

A. Well, if I may refer to them as exhibit numbers, our Exhibits 4, 5, 6 and 7 were all written up by Mr. Davidge's attorney at the same time. You will see that they are all tied back into the same contracts, in other words Exhibit 4 here recites what is in Exhibit 7 in part.

Q. Well, then, at that point had Mr. Davidge and Mr. Douglas agreed with you in so far as Exhibit 4 is concerned that you were entitled to all the dividends on the stock?

A. At the time that that was agreed to naturally accrue the same rights as I had under my contracts at 25-25 and 50 basis.

Q. Very well. Now, it is correct, is it not, that in the early part of December and before Pearl Harbor you and Mr. Davidge and Mr. Douglas really contemplated just going [103] ahead with the radio manufacturing and assembling business similar to that which Mission Bell had done in the past, is that right?

A. No, it is not entirely right.

Q. What did you contemplate before December 7, 1941?

A. Well, there was another thing I contemplated at that particular time, due to my previous experience in the transformer business and due to the fact that at that particular time there was a company by the name of Phelps Dodge which was selling out their fluorescent and neon transformer business. I remember taking a look at that particular business with the hope that Mission Bell—as a unit we could use to manufacture, represents

(Testimony of H. Leslie Hoffman.)

a possibility of going into other things besides the radio business.

Q. But all along the radio line and commercial and regular domestic manufacture—

A. Flourescent ballasts have nothing to do with radio.

Q. You refer to new lighting equipment and so forth? A. That is right.

Q. Did you ever actually do that? A. No.

Q. Did you ever take any steps to do it?

A. We took the steps of looking over the inventory and the price and a few things like that.

Q. What inventory?

A. The inventory of the Phelps Dodge Company. [104]

Q. Let's refer to Exhibit 5, which is your next exhibit. I see on page 5—and now you will notice this is an agreement of December 4th between you and the two Warners? A. Yes.

Q. On page 5 I wish to ask you about the reference in paragraph 6, refers to sales of merchandise shall be continued, sales of merchandise made by the company, and discounted bills and so forth. That would mean this contemplated the lines of manufacture which you have testified about, didn't it?

A. That was all we could contemplate at that time.

Q. Now referring to next Exhibit No. 6, this is the agreement of December 4, 1941 between you and Mr. P. L. Fleming. Mr. Fleming had been

(Testimony of H. Leslie Hoffman.)

a stockholder in the old company and owned 110 shares, did he not? A. Yes, sir.

Q. And I believe that this agreement says that you were to acquire that for \$2,750.00, which I suppose you did. A. Yes, sir.

Q. By the way, when, if there was any definite date, had all of these amounts which are provided for in the contracts with the old stockholders been fully paid off?

A. They were paid off at different times.

Q. When were they all paid off, do you recall the date that that happened?

A. Oh, yes. They were paid off, as I recall it, [105] completely paid by March, 1943.

Q. By March of 1943. That was \$2,750.00 Mr. Fleming was to be paid, was it?

A. As I recall, they were paid each \$4,825.00 for their stock.

Q. Was that all on or before March, 1943?

A. It was.

Q. Were they paid by installments or all at one time?

A. They were paid by installments. That is provided by the contract.

Q. It was paid out of the profits of the business?

A. Out of the profits, that is right.

Q. Then the stock of all the old stockholders of the company was acquired for the total sum of \$11,755.00, is that correct?

A. That sounds about the right amount.

Q. In accordance with the agreement, those are the figures there? A. Yes, sir.

(Testimony of H. Leslie Hoffman.)

Q. Going over to this next exhibit, that being the one I referred to, the one with Mr. Fleming, please examine page 2 there and particularly with respect to the \$1,500.00 payable to Mr. Fleming. Did he continue as an officer of the old corporation for a while, or what does that refer to, about the middle of the page, where it says it is understood that the [106] company is indebted to Mr. Fleming for the sum of \$1,000.00 and \$2,500.00 salary.

I judge that the latter figure is what was owing him for salary on account of services rendered, and I will ask you if that is a fact.

A. That referred to services which he had performed for Mission Bell Company as president of the corporation.

Q. Did he continue on at all with the new corporation?

A. Yes, sir, he did. In fact he is still with the company.

Q. He is? A. Yes, sir.

Q. What were his duties there?

A. Well, his duties after we took over was to handle the purchases.

Q. Now, up to the time that you had really become interested in acquiring along with others this Mission Bell Manufacturing Company had never had any great experience in the radio manufacture or assembly field, had you?

A. Well, that is according to what you would define as the word "great". I had experience at manufacturing because I started in when I was

(Testimony of H. Leslie Hoffman.)

13 years of age as a kid in the factory on the punch press, and I knew something about tools and dies, and each summer during vacations from school I had some such job, and I did know something about building [107] things, whether it was radios or whether it was machine products. I also had considerable experience in a position where I had to do with the sale of things and setting them up for distribution.

Q. But you had very little practical knowledge in your past with respect to the radio manufacturing business, is that right?

A. My experience predated my association with Mission Bell. My experience in the radio manufacturing business went back to 1928 or 1929.

Q. Is it true that a great deal of what you learn about and personally used in the operation of the Petitioner corporation here, was learned in the first instance from Mr. Fleming?

A. No, sir.

Q. You would say that is not true at all?

A. Absolutely not.

Q. Did he teach you anything about the subject?

A. He taught me some bad habits.

Q. Didn't he teach you any good ones at all?

A. Absolutely not.

Q. You paid him some money for what he told you about the business?

A. We paid him some money for some of the contacts that he had in so far as acquiring materials, his connections.

(Testimony of H. Leslie Hoffman.)

Q. Would you say that is absolutely all? [108]

A. Yes, sir, I would say so definitely, and positively.

Q. You feel quite strongly on that, do you?

A. I do.

Q. I am not proposing to ask how you became convinced of that. I just want to see what the facts are here.

I hand you a document which purports to be a statement apparently in connection with this income tax matter. Please examine that and state whether or not that is your signature.

A. That is my signature.

Q. That is your signature? A. Yes, sir.

Q. And that is the signature of your wife, is that so? A. That is right.

Q. This was sworn to before a notary public as indicated at the bottom? A. Yes, sir.

Mr. Crouter: I will hand you a copy of this letter and ask you to look at the last paragraph of page 2 and the statement therein contained. Then I want to ask you one more question about it. I will offer this document in evidence.

The Witness: Wait just a minute. If I may I want to read it. That is substantially correct.

Mr. Crouter: I offer this as Respondent's exhibit [109] next in order, just for the record, this being a statement by H. Leslie Hoffman and Elaine Hoffman regarding calendar year 1943, being dated December 18, 1945.

The Court: Being the statement just identified by the witness?

(Testimony of H. Leslie Hoffman.)

Mr. Crouter: That is correct.

Mr. Milliken: I would like to ask to see it before it is introduced.

Mr. Crouter: Yes, excuse me, I haven't shown that to counsel. I assumed you had seen that. I am offering that particularly for impeachment purposes and also to show—

Mr. Milliken: Impeachment, that is as far as you need to go, if it is for impeachment.

The Court: Admitted in evidence as Respondent's Exhibit E.

(The document above-referred to was received in evidence and marked Respondent's Exhibit E.)

[Printer's Note]: Respondent's Exhibit E is set out in full at page 473 of this printed Record.

By Mr. Crouter:

Q. Did I understand you to say, Mr. Hoffman, that the statements in Exhibit E are substantially correct? A. That is right.

Q. Referring to the statement in the last paragraph on page 2, "Mr. P. L. Fleming was connected with the corporation at the time Mr. Hoffman became interested in its possibilities, and Mr. Hoffman agreed with Mr. Fleming that if he would [110] acquaint him with the radio manufacturing business and lend him aid and assistance in the organization of the company, he would pay to Mr. Fleming the sum of \$1,500.00." That refers to Mr. Fleming acquainting you with the radio business, doesn't it? A. That is right.

(Testimony of H. Leslie Hoffman.)

Q. And he was to lend you any aid and assistance in reorganizing the company?

A. Yes, that was the theory of it. You asked me the direct question as to actually what happened.

Q. Well, I wanted to know whether it is not a fact or what made you say this, that Mr. Fleming had acquainted you with the radio manufacturing business.

Mr. Milliken: I object to that, your Honor. He has covered that in his first direct examination. He was asked if he knew Fleming at that time and he said no. This is no impeachment of his testimony. He certainly knew Fleming following that and paid him that \$1,500.00.

Mr. Crouter: I will withdraw the question. I think the record is clear as to what the question was.

Mr. Milliken: I think it is very clear.

By Mr. Crouter:

Q. Let's take one other little matter shown in Exhibit 6, which I believe is still before you. Please turn to page 2 of that exhibit, page 2-A, which is the third page of the [111] exhibit itself, and near the end of that paragraph, Mr. Hoffman, regarding the \$12,000.00, you may wish to examine the first part of that, which is paragraph 2 of the agreement, "It is understood that said company is indebted to Fleming" and so forth.

Mr. Milliken: Pardon me, Mr. Crouter. May I get your reference to that again?

(Testimony of H. Leslie Hoffman.)

Mr. Crouter: It is page 2-A of Exhibit 6.

The Court: What part of the page?

Mr. Crouter: The last sentence in that paragraph, and it is the first half of page 2-A.

By Mr. Crouter:

Q. Please examine that, Mr. Hoffman, where it says, "Fleming further agrees for the benefit of the company" and so forth, and then the latter part, "It being expressly agreed that for the purpose of determining whether or not said company is in a position to pay such dividends the compensation which will be paid to officers and/or employees of said company prior to the payment of dividends to stockholders of said company shall be payment to aggregate not more than \$12,000.00" Is that the way in which that \$12,000.00 arose? Was it either past salaries or future salaries, as you understand it?

A. I think that the previous sentence gives you the answer. It says Fleming further agrees especially for the [112] benefit of such company as well as for the benefit of Hoffman that he will not take action to enforce his claim against said company for salary earned and unpaid prior to January 15, 1943, and that on January 15, 1943 he will consent to further extension of the time of payment of such claim unless at or prior to January 15, 1943 said company is in a position to pay dividends on its stock aggregating the sum of \$1,500.00.

Q. Did you understand that to refer to Mr. Fleming's salary or to some one else's?

(Testimony of H. Leslie Hoffman.)

A. You refer to the \$12,000.00 mentioned in the paragraph?

Q. Did he mention it in the paragraph?

A. No, it sets it out clearly, I would think. It referred to dividends.

Q. It says salary not to aggregate more than \$12,000.00 will be paid to the officers and stockholders of such company, so that would include you, would it not?

A. Yes, sir, it would.

Q. Do I understand Mr. Davidge and Mr. Douglas were also agreeable to that provision?

A. Yes, sir.

Q. Then it is true that there was another agreement here, and you have the minutes of December 4, 1941, that being Exhibit 12, and I wish you would turn to that if you will, please. These are the minutes of December 4, 1941, referring to the three percent of all gross? [113]

A. That is right.

Q. Those are the payments to be paid over and above your regular salaries?

A. Yes.

Q. That extended for a period of thirty-six months?

A. Yes, to the best of my recollection.

Q. You had a definite agreement of that character with the old stockholders before Mr. Davidge and Mr. Douglas signed any agreement with you as to the three percent provision, is that right?

A. That is not correct.

Q. You did have the agreement with Mr. Fleming to that effect when you were negotiating with him, did you not?

(Testimony of H. Leslie Hoffman.)

A. The actual facts of this matter are these: that as I previously testified this salary arrangement and all these other contracts were drawn up by Davidge's attorney, Mr. Walker. Davidge's attorney advised that it would be best for the outgoing board of directors to approve this salary arrangement, and Davidge and Douglas were thoroughly familiar with that arrangement, inasmuch as it was their attorney that advised it.

Q. Did they raise any question about such three percent payments going to you being excessive?

A. Who do you refer to as "they"?

Q. Davidge and Douglas. [114]

A. No, sir, that was in our arrangement.

Q. Did they ever raise any question about that?

A. No, sir.

Q. They did at the expiration of the three-year period, did they not? A. No, sir.

Q. Did anyone? A. Beg pardon?

Q. Did anyone? A. Who do you refer to?

Q. Did anyone object to the three percent as being excessive at the end of the period?

A. Well, "anyone" is a very ambiguous word.

Q. Anyone having any contractual rights there?

A. Well, now, just what period do you refer to?

Q. Soon after the end of the three-year period, Mr. Hoffman. Well, the following three-year period commencing with January 15, 1943, it was changed and reduced a great deal, isn't that a fact?

A. No, sir. Again you are talking in very ambiguous terms.

(Testimony of H. Leslie Hoffman.)

Mr. Milliken: I object to counsel—

Mr. Crouter: I will be a little more specific.

The Witness: If you would ask me specific questions—

Mr. Milliken: Just a moment please. [115]

The Witness: Certainly.

Mr. Milliken: I object to counsel going beyond the year 1943 on any one of these matters.

Mr. Crouter: If your Honor, please, I submit that I am entitled to test the accuracy and reliability and credibility of this witness to some extent, and he makes some very emphatic statements that something never happened. I believe I am entitled to follow that up, since it bears right on the question of salary, and see whether his answer is correct or not.

The Court: We will settle that right now. We will go beyond 1943 then. That is the reason I withheld my ruling on that matter earlier. I think at this time it is apparent that to get a complete picture it probably will be necessary to come somewhat down beyond 1943. You will be permitted to ask questions, and later I will admit the instrument that was offered that covered 1944, I believe. I don't say at this time that we will come any further down than 1944. There has to be somewhere a reasonable line of demarcation in these matters. Proceed.

By Mr. Crouter:

Q. Mr. Hoffman, I show to you a document here which is labeled "Prospectus of Hoffman Radio

(Testimony of H. Leslie Hoffman.)

Corporation." I believe you are familiar with it, are you not? A. That is right. [116]

Q. You signed the original of it, did you not?

A. That is right.

Q. And at page 35 of this prospectus I call your attention to the paragraph, about the middle of that page, referring to— A. My income?

Q. Certain income, salaries, and so forth, and a change made for the period from May 1, 1946 to April 30, 1949? A. That is right.

Q. That change was made, was it not?

A. That is right.

Q. Just exactly as stated in the paragraph?

A. That is right.

Mr. Crouter: I offer this document, if the Court please, this being the prospectus of the Hoffman Radio Corporation relative to issuance of shares of common stock.

Mr. Milliken: No objection.

The Court: Now just a moment. You say that covers 1946 to 1949?

Mr. Milliken: Yes, your Honor. That is why that I think it becomes immaterial. It will be necessary for me now, if that document is under the limitation, we will show there was a public offering of this stock in 1946. I am going to show that Mr. Hoffman's salary in connection with that was [117] \$35,000.00 a year, that he agreed to reduce it to \$35,000.00. He was given a bonus arrangement of 12 percent on all the profits over \$100,000.00. He was likewise given a number of other executive

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(Testimony of H. Leslie Hoffman.)

offices that came into this corporation and that took on functions that Mr. Hoffman had been performing in the year 1943, with which we are concerned. Mr. Hoffman had duties after duties removed from his responsibility. That is no criterion as to what his compensation should be for the year 1943.

The Court: Well, as I said a few moments ago, somewhere there has to be a line of demarcation that dictates what is helpful to me, and that is the question here in the long run, what is helpful to the Court in deciding what the situation was in 1943. It seems to me that although you made this offer and Petitioner has not objected because apparently he would rather like to go into the matter too, just from my standpoint it seems to me that you are getting on very thin ice, to use that expression, so far as offering anything actually helpful in 1943. Why is this going to help me on 1943, if you have any theory on that? This is three years after that date.

Mr. Crouter: Well, I don't know. I hope counsel remembers that the facts now in evidence, as shown by paragraph 18, show that the employees increased, 1944 there being 351 as against 297, in 1945, 462 and 1946, 765. I don't want [118] to go too far afield in the other year, if the Court please, but I believe that they have a bearing directly on the answers given by the witness here, and I believe his testimony prior to that matter would infer that there had never been any change from the three percent of the gross arrangement. I believe

(Testimony of H. Leslie Hoffman.)

I am entitled to go into that, and I do not propose to go far afield on these later years.

Mr. Milliken: Well, the answer, it would seem to me, your Honor, if you will bear with me, is that counsel is obviously endeavoring to show that this three percent was too high in 1943 by showing that in 1946 they changed to some other basis lower than that. Then we have to show why that is so, and we have got abundant evidence to support that, but it just takes a great deal of time.

The Court: For the present time at least I am not going to admit this instrument. It is too far afield. No objection was made—

Mr. Crouter: I will withdraw the exhibit.

The Court: Petitioner's salary 1946 to 1949; we will be here forever trying this case if this keeps on. I want you to try your case properly, but there is no reason as far as I can see to expect that the years 1946 to 1949 even establish what the reasonable value in 1943 is.

By Mr. Crouter:

Q. Mr. Hoffman, at the time that you and Mr. Davidge [119] and Mr. Douglas went into Mission Bell and acquired your interests in the corporation, it really was not established as a radio manufacturing company, was it? A. No, it wasn't.

Q. Isn't that true at the time you negotiated with people having war contracts, other corporations having war contracts, so that your corporation was more or less compelled to just come in as a subcontractor?

(Testimony of H. Leslie Hoffman.)

A. Our corporation was forced to get business where they could get it.

Q. You had no prime contracts at all for the federal government in 1942, did you?

A. Yes, sir.

Q. Oh, yes, I see one stipulated, \$178.

A. That is that contract I referred to previously. It was actually \$1400.

Q. And one other on which you apparently received \$336.28.

A. I believe we have a stipulation listing the contracts and their dates, do we not?

Q. I don't know if that is included here in the stipulation, because most of your work was really subcontracting all through your 1942 orders, isn't that right? I mean as far as government is concerned. Inspecting your Exhibit 2, I find you had subcontracts chiefly which you got from the prime contractors, Bendix Aviation and Kingston Products?

A. Those are the actual sales, yes, sir.

Q. And that was really due to the fact that the government at that time required the manufacture and production [121] of a great many things which are absolutely new not only to your corporation but also other corporations, isn't that right?

A. Yes, sir.

Q. Referring to the renegotiation reports for 1942 and 1943, I suppose that the Bendix Aviation and Kingston Products already had their orders that they were filling for the government and you in a sense just helped to fill those orders under subcontract, isn't that the size of it?

(Testimony of H. Leslie Hoffman.)

A. Bendix Aviation and Kingston Products were prime contractors and they were to subcontract certain components and certain assemblies, and we handled their requirements of the two particular things.

Q. You refer to the variable condenser?

A. Yes, sir.

Q. And the antenna kite that you testified to?

A. Yes, sir.

Q. Do I understand you to say that you, I mean you and your company and anyone employed by it, manufactured something that was new in design and model and so forth, or was it just from plans that were furnished?

A. It was a combination of both. They had a function that they wanted to perform with the variable and with the kite, and they gave us some rough drawings on it. We started in with the rough drawings and redesigned it, both for their [122] performance and for their manufacture, and so it was really a combination of both. They had prints covering the various things, but we contributed a great many different changes at subsequent times.

Q. Most of them were really laid out by the plans and specifications of the military branches concerned?

A. No, sir, they were not.

Q. Isn't that right?

A. No, sir, that is not right.

Q. Well, let's get on to Exhibit 4 here in evidence. As I understand it the number on the jobs shown on this are the numbers of the various other companies?

A. That is right.

(Testimony of H. Leslie Hoffman.)

Q. And in that column it shows for the Bendix Aviation one here for the variable condensers?

A. That is right.

Q. That is 4LCD5220W, it being dated February 12, 1943. Now, Bendix and the government had already arrived at very definite standards and specifications as to what they wanted, had they not?

A. There is a difference there which is a technicality. They had arrived at the performance specifications of what they wanted it to do.

Q. But in this case Bendix or other corporations already produced certain things along that line of the contracts for [123] the military departments, and were furnishing those?

A. Well, actually the whole unit was an English design, and then we took it and modified it.

Q. Did anyone in your corporation get any patents on any of those things you manufactured on government prime contracts or subcontracts?

A. Patents were not applied for, generally speaking, during the war, because the patents were waived anyway.

Q. A sort of a pool of patents?

A. Yes, sir.

Q. I mean for war production.

A. All patents and all licenses were waived.

Q. How many different things would you say the Hoffman Radio Manufacturing Company turned out separate and apart from any design that was previously furnished, during 1942 and 1943?

(Testimony of H. Leslie Hoffman.)

A. Would you rephrase your question, please?

Q. I mean different new designs or models or condensers or kites or anything else along that line.

A. 1942 and 1943?

Q. That is right.

Mr. Milliken: If I may interrupt you, evidence that we will put on will show all the things that they redesigned in the years 1942 and 1943, and I think the witness will take them up and more specifically answer the question. [124] They were all things made in 1942, 1943 and 1944.

Mr. Crouter: Counsel is not testifying, and I haven't had a chance to look at this.

Mr. Milliken: Well, I just thought I would facilitate your examination.

Mr. Crouter: Will this be covered by other witnesses?

Mr. Milliken: Yes.

By Mr. Crouter:

Q. Can you answer the question, Mr. Hoffman? Do you know?

A. The period with 1942 and 1943?

Q. That is right.

A. Well now, let's see. I would say roughly seven different types of units.

Q. And you had nothing to do with the real invention or designing of any of those, did you, you personally?

A. Yes, I think I can claim certainly some contribution there.

Q. How many of the seven did you personally do any substantial portion of the work going into

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A. Yes, I think I can claim certainly some contribution there.

Q. How many of the seven did you personally do any substantial portion of the work going into

(Testimony of H. Leslie Hoffman.)

the development and perfection of the device?

A. Well, I personally didn't do any that I considered was designing of it. However, of the seven, four of them were conceived in a laboratory that I was instrumental in setting [125] up, and had it not been for that particular laboratory and my initiative in setting it up, the government would have been without some rather important circuits that were developed in that laboratory.

Q. Was that the extent of your participation on such matters? A. No, it was not.

Q. Just setting up the over-all supervision and the mechanics in the plant where it could be done?

A. I contributed some things on the mechanical design of it, but generally speaking Mr. Harmon was the head of that.

Q. He was your head engineer, was he?

A. Yes, sir.

Q. And you had subordinate engineers who chiefly worked on those matters, isn't that right?

A. We had one or two at that time, yes. That was in 1942.

Q. In connection with the plant that you had, where was the plant located and the office and so forth in 1943?

A. 1943 it was at 3430 South Hill.

Q. When was it moved to the location about 3751 South Hill? Is that the correct address?

A. 3761.

Q. Yes. A. That was March, 1946. [126]

Q. Did the company acquire or own any real property? A. Yes, sir.

(Testimony of H. Leslie Hoffman.)

Q. Of its own during 1943? A. Yes, sir.

Q. About what was the over-all considering in acquiring the Mitchell-Hughes plants, its assets?

A. As I recall it, there was approximately sixteen or seventeen thousand dollars. Ten thousand of which we paid immediately.

Q. And that included everything you testified to that came over except personnel?

A. Pardon me?

Q. That included all the property except your personnel arrangements, your contracts with personnel, isn't that right?

A. I am sorry. I don't understand your question.

Q. Was sixteen thousand dollars the over-all consideration for everything you acquired in the Mitchell-Hughes Company? A. Yes, sir.

Q. Mr. Harmon really brought over through or he was instrumental in having a good many of the former employees of Mitchell-Hughes come over and go with your corporation, is that right?

A. No, you have it a little bit wrong. We didn't remove Mitchell-Hughes employees to Mission Bell. Mitchell- [127] Hughes had the employees and we moved Mission Bell into Mitchell-Hughes.

Q. They came with your company is what I mean by that, they worked for your company?

A. Yes, sir, they transferred from Mitchell-Hughes to Mission Bell.

Q. Yes. Did I understand you to say that you and possibly some others worked for a period of four or five days without any sleep?

(Testimony of H. Leslie Hoffman.)

A. That is right.

Q. Do you really mean that, Mr. Hoffman?

A. I mean it very sincerely.

Q. Day and night? A. Day and night.

Q. You lived pretty near your plant, did you not? A. No, I lived in Alhambra.

Q. Who was it that did that job and worked that way?

A. Well, actually there was Harmon, a chap by the name of Cliff Larken, a chap by the name of Dillen, Fleming, Mr. Douglas came down and worked and I stayed there and some of the boys went home and caught some sleep. I went back and laid down for a little while. Hell, that was the only way we ever got the job done.

The Court: Now just a moment. We don't need profanity in this Court. [128]

The Witness: I apologize, your Honor.

The Court: If you are quoting someone else, of course that is a different proposition, but it is not necessary. I am no stickler on that, but the Court doesn't appreciate it.

By Mr. Crouter:

Q. You didn't keep going from Monday morning to the following Sunday night without any sleep, did you?

A. It was not Monday morning. It was Wednesday morning.

Q. It was from Wednesday morning until the following Sunday night?

A. Until the following Sunday night.

Q. Straight through without sleep at all?

(Testimony of H. Leslie Hoffman.)

The Court: I think probably your earlier testimony was mistaken then, because I understood Monday morning.

The Witness: If I said Monday, I misspoke myself. It was Wednesday.

By Mr. Crouter:

Q. Referring to the 1943 tax return, Mr. Hoffman, I want you to examine the list of assets of the company so the Court can tell about what the tangible assets consisted of at the end of the year 1943. Some of those may need some explanation. I am referring now to Exhibits A and B. You see that has the heading of assets, and getting down to the property account, can you tell the Court by reference to those figures, [129] especially those for the end of the year, you have a total here of \$91,214.54, and it doesn't seem to be allocated between land and other property. There is a division of 2,282 and 88,932. What did that chiefly consist of at the end of 1943?

A. The major asset was the plant at 3761 South Hill.

Q. What was the status of that plant as to ownership by the corporation? Had it acquired title to it at that time or was it acquiring it?

A. It was in the process of acquiring it. The cost of the property which included the building of 18,500 feet and land of 37,000 feet was approximately fifty-five thousand dollars, as I recall it.

Q. That occurred during 1943?

A. As I recall, it was June of 1943. You see, we needed additional facilities to handle this navy

(Testimony of H. Leslie Hoffman.)

contract, and at that Mr. Douglas, Mr. Davidge and myself went into it on approximately a three way basis and contributed the money to make up the \$25,000 down payment.

Q. Had that really been secured in large measure from earnings or what yourself had secured out of the corporation as compensation, insofar as your part of it was concerned?

A. Frankly, I don't remember where it had been secured from.

Q. Well, was the entire \$55,000 paid off so you had a [130] clear title at the end of the year?

A. No, it was not paid off by the end of the year. It subsequently paid off, yes, sir, but just when it was completely paid off I don't recall.

Q. That plant was really regarded as a war facility at the time it was originally acquired, was it not?

A. Yes, sir, we secured a certificate of necessity on it.

Q. So that it was subject to amortization under Section 1241 of the Internal Revenue Act?

A. Frankly, I don't know whether that is the section or not, but it was subject to rapid amortization.

Q. So you did have a very substantial plant there by the end of the year, didn't you?

A. Yes, we had a good plant.

Q. About how much was the building space there in 1943? A. 18,500 feet.

Q. Does the plant cover all the block down there now? A. No, sir.

(Testimony of H. Leslie Hoffman.)

Q. Did it at the end of 1943 cover half or two-thirds of that block?

A. No, sir. That is a very big block.

Q. What is the outside measurement of the lot there?

A. I would say we have 200 feet and I would say that the block was all of 2,000 feet long. [131]

Q. Did the plant at that time extend from Hill Street over to Grand Avenue, just the way it is now?

A. Well, the reason I was hesitating was we acquired the lot between Grand Avenue and the building after we acquired the original property.

Q. I see.

A. And I have forgotten just when we acquired that lot.

Q. That was a corner location on Hill Street and 38th Street?

A. No, it is not a corner location.

Q. It wasn't then?

A. No, it is in the middle of the block, or it is off the corner of the block about 200 feet.

Q. As I understand it, no stockholder of any kind received any dividends as such out of the Petitioner corporation for the year 1943, is that correct?

A. That is correct. We couldn't pay a dividend due to our arrangement with the California Bank.

Mr. Crouter: I believe that is all.

(Testimony of H. Leslie Hoffman.)

Redirect Examination

By Mr. Milliken:

Q. Mr. Hoffman, counsel has asked you about the license agreement that the corporation had with the Radio Corporation of America, and I will ask you if this is a copy of the license agreement or the original rather? [132]

A. 1940, it ran until 1946, I think. When it expired can't tell. There have been several of those.

Q. Well, it is signed there by officials of Mission Bell, Fleming—

A. I was trying to find out when this expired. The one that we had expired December 31, 1946. I think that is it, yes.

Q. Was that the agreement that was in force when you acquired—

A. I am quite sure it is. I couldn't find the expiration date, but the one we had expired December 31, 1946.

Q. I will refer you to Section 8 and ask you what money payment it is that is provided in Section 8?

A. The money payment was \$5,000.

Q. If you testified to \$2,500 on cross-examination, were you in error?

A. Yes, I was in error.

Q. So that if Mission Bell had not paid over \$5,000 in 1941 it would have been subject to cancellation, as I understand it?

A. Yes, sir, that is right.

Q. And did they pay the \$5,000 in 1941?

(Testimony of H. Leslie Hoffman.)

A. No, they didn't pay the \$5,000 in 1941, because the R.C.A. gave them a waiver on that particular paragraph. That was received, as I recall it, in March of 1942. [133]

Q. I show you a document and ask you if you can identify it?

A. This is our agreement between the California Bank and ourselves.

Q. Agreement between the California Bank and your corporation? Speak up a little bit. I don't think the Court can hear.

A. This is our agreement on our V loan with the California Bank between Mission Bell Radio Manufacturing Company and California Bank.

Q. I will ask you to read the A on page four and subdivision four.

A. "Without the prior written consent of the bank, the prior written consent of the Federal Reserve Bank of San Francisco as fiscal agent of the United States acting on behalf of the guarantor named in the agreement herein referred to, borrower will not declare or pay any cash dividend upon its capital stock or acquire any of its outstanding stock or otherwise make any change in its capital structure, or merge or consolidate with or into any other corporation, or convey, sell, lease or transfer assets the ownership of which is necessary to continuation of its business."

Q. Is that the basis for your statement to counsel for the Respondent that you were prohibited in the year 1943 from paying cash dividends? [134]

(Testimony of H. Leslie Hoffman.)

A. Yes, sir.

Q. Referring to the same agreement then to paragraph 8, subparagraph 8 of paragraph A on page four, I will ask you to read that as well.

Mr. Crouter: If your Honor please, this has not been offered. I don't know whether counsel proposes to offer it, but I would like to see that document before it is all read in the record.

Mr. Milliken: I am just asking if that is the document that he pursuant to the loan agreement. He says that is the original.

Mr. Crouter: I object to counsel or the witness reading anything and getting the document in the record without having it introduced in the record.

The Court: Ask him what it is, of course, before you have it read. Let's have it in evidence.

Mr. Milliken: I offer the exhibit in its entirety as Petitioner's exhibit next in order.

Mr. Crouter: May I see it?

Mr. Milliken: This consists of, if it please the Court, of two documents.

The Court: Let the two instruments together be admitted in evidence as Petitioner's Exhibit No. 5.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 5.)

[Printer's Note]: Exhibit No. 5 is set out in full at page 394 of this printed Record. [135]

(Testimony of H. Leslie Hoffman.)

Mr. Crouter: There is no objection. I didn't know counsel had offered that.

Mr. Milliken: I ask the privilege of substituting a photostatic copy, since this is the original agreement.

The Court: Permission will be so given.

By Mr. Milliken:

Q. Now, if you will refer to paragraph, subparagraph 8 of paragraph A on page four, read that, please, Mr. Hoffman.

A. "Permit borrowers officers or directors each more than the aggregate sum of \$15,000 cash per calendar month as salaries or make any cash payments to the various officers and directors as fees, bonuses, or otherwise except pursuant to agreements which were all ready in effect on January 1, 1942."

Q. Did you personally handle the negotiations with the California Bank incident to this loan?

A. Yes, sir, I did.

Q. Did the California Bank incident to that loan refer to and recognize your contract with the corporation which has been introduced in evidence and entered into on December 4, 1941?

A. Yes, sir.

Q. Mr. Crouter has asked you with respect to the business done in the year 1942, and I ask you to look at Exhibit 2 of the stipulation, and its title, Commercial Receipts [136] \$122,799.03. Did this represent the sale of radios?

A. Yes, sir.

(Testimony of H. Leslie Hoffman.)

Q. Commercial radios? A. Yes, sir.

Q. Who had manufactured those radios?

A. No one had manufactured them. We had manufactured them ourselves.

Q. Who do you mean by yourselves?

A. Mission Bell.

Q. So that represented the sale of their product during the year?

A. Those that we had manufactured after January.

Q. Manufactured after January 1, 1942?

A. Yes, sir.

Mr. Milliken: I believe that is all.

Recross-Examination

By Mr. Crouter:

Q. Just a few questions, Mr. Hoffman. Referring to Exhibit 5, one of the documents being the agreement between your company and the bank, as I understand it, and your testimony as to the consent of the bank being necessary in order to pay any dividends, please tell the Court whether at any time during 1943 or after that year, but counting the year 1943, your corporation made any application to the California Bank in any manner to secure its consent to pay any dividend. [137]

A. During the year of 1943?

Q. During the year or after the end of the year but relating to 1943 earnings.

A. There was no application made that I know of which referred to 1943.

Q. Your company never proposed it and never took the subject up with the bank, is that right?

(Testimony of H. Leslie Hoffman.)

A. Never for 1943. That is the year we are discussing.

Q. I see. On the salary question, you testified to what you considered was really covered by agreements prior to January 1, 1941 as shown by the record here, isn't that the situation?

A. Yes, sir.

Q. Was there any discussion at any time in which you participated at, in or among the officers or directors of the Petitioner corporation with respect to the question whether a dividend would or would not be declared on outstanding stock for year 1943?

A. Yes, sir.

Q. When was that?

A. It was discussed at various times between Mr. Douglas, Mr. Davidge and myself.

Q. Are there any minutes of any meeting covering that subject, referring to dividends in any respect?

A. No, sir. The way we handled our corporation minutes [138] was we never had anything in our minutes that we didn't actually get done, as I recall.

Q. Tell us about the discussion.

A. Well, as I recall it it occurred at various times. You see Mr. Douglas and Mr. Davidge had gone into service, and I would see them periodically and write them monthly as to progress, what was going on, and I would discuss with them whether or not they thought that any dividends should be paid, and their universal attitude was that there should be no dividends paid while the

(Testimony of H. Leslie Hoffman.)

company was in a growth position, and of course we were—our hands were tied, even though we wanted to pay a dividend.

Q. Referring to the growth position, you mean because it was handling a lot of new orders and also acquiring considerable new property?

A. I think growth—I don't think that is a complete definition of growth, but that is part of growth.

Q. Is that mainly what you have in mind there when you use the phrase, or what do you mean?

A. When I use the phrase I mean the growth in the volume of business the company was handling.

Q. That indicated that you expected it to have more earnings then, didn't it?

A. That is the object of any business, sir.

Q. One further question I should have asked before, [139] if the Court please. Referring to the renegotiating matters you testified about this morning and some voluntary turning back of amounts by rearranging of contracts and so forth, was that really when those contracts were being investigated and the question was under consideration with the military offices?

A. There was no investigation, sir.

Q. At no time?

A. We did the work voluntarily, but you see there were several different types of contracts. There was a type of contract that had what we call a redetermination of price in it. After a cer-

(Testimony of H. Leslie Hoffman.)

tain percentage, in some cases it was 50 percent, of the contract had been executed and the contractor had experience, then he would estimate the new price, and of course it was—you could not only go up but you could go down, and part of the \$100,000 was from one of those contracts which had the redetermination clause in it.

Q. Did that happen in 1943 or was that later?

A. There was \$1,000,000 that actually came out of the 1943 operation. I am quite sure there was more later, but that is what was applicable to 1943.

Q. Was that done as an incident to the securing of further contracts with the government?

A. Well, it was done as an incident of equity.

Q. You just did it voluntarily, your corporation, without any communication at all with the government agent or [140] military branch?

A. No, that was not the case. I mean—

Q. Please tell the Court what the facts were then.

A. Well, I tried to tell you that those were different in each individual case, and you are trying to get me to make general statements which are not always applicable to individual cases.

Q. Tell us about that one.

A. In that case that I referred to, that one was a contract that had a redetermination price in it. As an example, the amount was a very substantial one, six figures in one contract that we were dealing with, and we only spent ten percent of what we had allocated to it, and in as much as

(Testimony of H. Leslie Hoffman.)

we had been able to effect that saving we passed it on.

Q. And you undoubtedly agreed among yourselves that there would be a renegotiation or adjustment if you didn't go ahead **and make it first** did you not?

A. We thought it was better to do it voluntarily rather than under pressure.

Q. Yes, and I presume the reason is that you go ahead on future business.

A. Well, we were not trying to exploit the **thing**. We thought we were entitled to a fair profit, and after that we remitted **the rest**.

Q. But even with all that you still felt that you had [141] no money at all to use for dividends, was that the situation?

A. The belief was that we could not pay a dividend under our bank loan.

Q. But this agreement which is shown in evidence as Exhibit 5 refers to after July, 1943, but prior to that time there wasn't any contract restricting any payment of dividends, was there?

A. Frankly, I don't recall.

Q. You don't know of any, do you?

A. I would have to look at the records before I could answer that.

Q. Is there any definite contract between the Hoffman Radio Corporation and any bank which restricted the payment of dividends prior to the contracts shown by Exhibit 5?

A. There was a prior contract when we had a loan of \$200,000 in 1942, but I would have to

(Testimony of H. Leslie Hoffman.)

look the contract up to see whether or not there was a restriction on dividends or not. I am under the impression that there was.

Mr. Crouter: That is all.

Mr. Milliken: That is all, Mr. Hoffman.

The Court: Let me ask the witness a question.

The Witness: Certainly.

Q. (By the Court): A few minutes ago you were asked about the sales in 1942 of commercial radios in the amount of \$122,799.03? [142]

A. Yes, sir.

Q. As shown by Exhibit 2 attached to the stipulation. I understand you to say that that was commercial radios manufactured after January 1, 1942?

A. Yes, sir.

Q. I have been wondering what became of the radios, I am under the impression something like 100 altogether that were on hand when you went into this matter, roughly speaking as of the 4th of December, 1941

A. We sold most of those, your Honor, for the Christmas trade in 1941.

Q. That is what I wanted to know. You didn't have any substantial amount of them left over.

A. No, sir.

Q. In 1942?

A. That is right. The only ones that we had left over with the possible exception of five or six, which wouldn't amount to **more than two or three**

(Testimony of H. Leslie Hoffman.)

hundred dollars, was the units that were partially finished, and we had to buy the component parts to finish the assembly and then sell them.

The Court: That answers my inquiry. Call your next witness.

Mr. Milliken: Mr. Clippinger. [143]

Whereupon,

JOHN H. CLIPPINGER,

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Tell us your name, Mr. Witness.

The Witness: John H. Clippinger.

Direct Examination

By Mr. Milliken:

Q. Mr. Clippinger, where do you reside?

A. 600 North Saltair, Los Angeles.

Q. That is a suburb of Los Angeles?

A. No, that is Los Angeles.

Q. How long have you lived here, Mr. Clippinger? A. Three years next month.

Q. Where did you live prior to that time?

A. Chicago, Illinois.

Q. How long had you lived in Chicago prior to that time? A. Approximately ten years.

Q. Were you engaged in business in Chicago?

A. Yes, sir.

Q. What business?

A. Radio manufacturing.

Q. With what company were you identified, if it was a company? [144]

(Testimony of John H. Clippinger.)

A. Continental Radio Corporation, which was succeeded by the Admiral Corporation.

Q. In the year 1943 were you then connected with the Admiral Corporation or its predecessors?

A. Yes, sir.

Q. In what capacity?

A. Vice-president in charge of all sales and general activities of the company.

Q. Do you remember the volume of sales of that company during the year 1943?

A. If I recall, and I believe I do because I checked it before coming down here, it was approximately around seven and one-half million dollars.

Q. Did they engage in the sale of commercial radios? A. Yes, sir.

Q. What was your compensation as vice-president of that company?

A. My total earnings which included dividends of the stock I held, because it was a wholly owned company of about five of us, approximately forty to fifty thousand dollars a year.

Q. What out of that forty or fifty thousand a year would represent dividends?

A. Oh, approximately ten thousand dollars.

Q. So then, you were paid then how much—I am trying—— [145]

A. The salary was \$35,000 a year, if that is——

Q. \$35,000 a year? A. That is right.

Q. And you were the vice-president in charge of sales? A. Yes, sir.

Q. Did the corporation have a president?

(Testimony of John H. Clippinger.)

A. Yes, sir.

Q. What was his salary?

A. His salary was \$50,000.

Q. Did they have any other officers?

A. Yes, sir. There was another vice-president in charge of manufacturing.

Q. What was he paid?

A. He was paid, I think it was \$30,000.

Q. Were there any other officers?

A. The treasurer was paid approximately fifteen or eighteen, I don't recall exactly; the secretary around fifteen, assistant secretary and assistant treasurer were paid \$12,000 a year.

Q. Did that corporation have a Washington representative?

A. We had a Washington representative, yes, sir.

Q. What was his duty?

A. His duty was just doing the leg work for me, errand boy. [146]

Q. Do you know what you paid him?

A. Yes, we paid him \$8600 a year.

Q. Do you have any statement, any profit and loss statement or balance sheet of your corporation as of December 31, 1942?

A. I think it is 1942 or 1943. Yes, 1942.

Q. Is that the balance sheet of your corporation that you received as vice-president of the company? A. Yes, sir.

Q. Is the general administrative expense shown with respect to your company?

A. Yes, sir.

Q. What per cent does that show?

(Testimony of John H. Clippinger.)

A. 7.71 percent.

Q. Of what? A. Of the total business.

The Court: What is that a percentage of, a percentage of what else?

The Witness: Well, there was 7.71 of the seven million some dollars worth of business.

Q. (By Mr. Milliken): In other words, of the gross business shown of seven million odd dollars, the administrative expense was 7.71 per cent.

A. Yes. The net sales, it says on here, that per cent [147] of net sales.

Mr. Crouter: Is counsel offering that document?

Mr. Milliken: No, I am not. I am introducing this witness as an expert on——

Mr. Crouter: I see. The one back of this is another exhibit.

Mr. Milliken: That is a different exhibit.

Mr. Crouter: Very well.

Q. (By Mr. Milliken): How long before the year 1943 had you been engaged in the radio business?

A. Well, I have been in the radio business in every conceivable manner since 1924.

Q. In what capacities have you been in the radio business?

A. I had retail experience and manufacturing and wholesale departments, with field salesmen and manufacturers.

Q. In 1943 were you familiar with the companies engaged in the radio business?

A. Yes, I would say that I knew personally practically everyone in the manufacturing end of the radio business, either knew them personally or knew of them.

(Testimony of John H. Clippinger.)

Did you know of a corporation known as the Mission Bell Radio Manufacturing Company, whose name was changed to Hoffman Radio Corporation in 1943? [148] A. Yes, sir.

Q. Do you know of its operations?

A. I know of its operations, not intimately, but I knew of their lack of success, and more or less the reason for their lack of success. It was common industry knowledge.

Q. Do you know of the standing of the Mission Bell Radio Company in the year 1941?

A. They had no standing.

Q. It has been stipulated in the evidence, Mr. Clippinger, that the Mission Bell lost money in the years 1939, 1940 and 1941, and that in the year 1941 it had sales of \$29,000 and cost of sales \$30,000, and lost in that year 1941 \$15,000 from operations?

A. I didn't know the figures, but I knew that they were practically out of business when Sears cancelled out their business.

Q. It is also in evidence that on December 4, 1941 an agreement was entered into between Mr. Hoffman and the Mission Bell Radio Company whereby he was to have a three year contract, his compensation to be based on three percent of the gross sales, and in the year 1943 the stipulation shows he was paid a salary of \$8800 and commissions of some \$5400, or a total of \$63,000. As a man experienced in the radio industry, would you say that the contract which Mr. Hoffman entered

(Testimony of John H. Clippinger.)

into on December 4, 1941 was a fair reasonable contract? [149]

Mr. Crouter: If your Honor please, I object to the question, because while the witness was very well established in the field generally and in his territory and in his business at Chicago, and nationally if that embraces his territory, no sufficient foundation has been laid with the witness to show that he knew anything like the facts and circumstances which are all ready shown by the record in this case. I don't even believe the witness was in court this morning, so he doesn't know what the evidence is here. He has no conception, at least it has not been shown here, that he knew exactly what the manufacturing situation of the Petitioner was on December 4, 1941, and I submit that while I suppose this is an expert opinion, evidence on what he considers to be fair and reasonable, that there is no sufficient foundation whatever laid for him to have an opinion, and this witness can not be asked such a question in that manner.

The Court: I will let you state to this witness the facts involved here before I receive the answer. I think he should know something more about the details of it, not too much detail of course, about this company, before he answers.

Mr. Milliken: Well, it has been further stipulated, Mr. Clippinger, that this company's assets exceeded its liabilities on December 4, 1941; that it had a deficit in surplus and that it had a very small inventory of goods on hand; that [150] it was

(Testimony of John H. Clippinger.)

in default on December 4, 1941 with respect to its license fee to the Radio Corporation of America; and that it had three employees on December 4, 1941, consisting of a man by the name of Fleming who had been its directing head, and a young lady and a stock clerk. Now, that in general is the picture of the corporation's fiscal affairs as a result of stipulations and evidence of record, as I understand it.

A. I have known Mr. Fleming for many years.

The Court: Now you are repeating your interrogation?

Mr. Milliken: Yes.

The Witness: The question was do I think that was a fair——

Mr. Milliken: Well, let's rule upon it first.

The Witness: Pardon me.

Mr. Crouter: I will just make the same objection, if the Court please. I don't believe sufficient foundation has been shown yet here to show that the witness knew what the exact situation of the Petitioner Company was, and Mr. Hoffman's situation at the time, and there are a number of agreements here and things of that character that are not incorporated. It is not a proper hypothetical question. It does not fairly and completely embody the evidence in the case. I would oppose it because as it is at this moment I don't think it would be worth anything to the Court. [151]

The Court: Well, the question here is in the main a general one, as to the reasonableness of the

(Testimony of John H. Clippinger.)

salary received. This question goes to the reasonableness of this contract made, as I understand it.

Mr. Milliken: Correct, your Honor.

The Court: And the facts concerning the contract seem to me to be at least in general fairly well known to the witness. The objection will be overruled and the question allowed. You may go into that matter on cross examination, but it seems to me that he has been sufficiently informed to answer this question. Answer the question. Exception allowed to the Respondent.

The Witness: Well, I would like to answer in my own way, if I may, your Honor. I don't know anyone in the industry, including myself, that would have accepted a contract at such a low basis as three percent with more or less of a defunct company. I have seen too many radio companies in the last 20 years go broke and people who try to salvage them nine times out of ten were unable to salvage them, and the gamble is so great that if offered to me I would want at least ten percent at the minimum.

By Mr. Milliken:

Q. Then your answer would be yes, in your own judgment?

The Court: Now, he is your own witness.

Mr. Milliken: I beg pardon, your Honor. [152]

The Court: He is your own witness. Don't lead him.

By Mr. Milliken:

(Testimony of John H. Clippinger.)

Q. Well, would you say then that a contract of three percent to Mr. Hoffman represented a fair and reasonable compensation?

A. Yes, sir, I certainly do.

Q. Were you familiar in the year 1941 and in the year 1943 with the measure of compensation of executives of small radio corporations?

A. I would say I had a general knowledge of what most every executive earned.

Q. Were they compensated upon a straight salary or an incentive plan, or what was the plan?

A. In any successful company, whether they were small or large, the normal procedure was a salary or profit sharing arrangement of some type, but basically a salary, especially if they had very few stockholders.

Q. Did your company in the year 1943 have any negotiations with respect to a Washington representative, or did you have one?

A. Well, we did that earlier. In 1941 and in 1942 it was rather difficult for companies to obtain war business, and war business was going to the very large companies, like General Electric and RCA, who had very large crews of engineers [153] and we knew we were going to be washed out of the domestic business as of April of 1942, and plus the fact that we wanted to get into the war end of it, we attempted to get some war business from the army and navy. I offered one man who was in W.P.B. in Washington three percent if he would work for me in Washington. [154]

(Testimony of John H. Clippinger.)

Q. Three percent of what, Mr. Clippinger?

A. Of the total war contracts that we obtained from the army and navy. Our eventual total there was \$10,000,000 and it would have netted him over \$300,000. He turned it down for the simple reason he felt he wanted to stay in his position on the W.P.B. He didn't need the income, had a very successful business in New York City. We were solicited by a number of sales companies in Washington, sales representatives. I have numbers of their contracts on my desk, in which they were going to get us war business for a five percent premium. That was the going rate for all sales representatives in Washington, was on a five percent basis. I turned that down and I just kept on plugging. That is where I first met Mr. Hoffman, and got our own business. The only expense we had in that was a leg man in Washington which I paid \$8600 a year to.

Q. Were you familiar with the types of contracts that the Hoffman Radio Corporation had during the year 1943 with the government agencies?

A. I only know of those which Captain Shea, who was the——

Mr. Crouter: If your Honor please, I object to this. I believe that calls for yes or no as an answer, and I object to volunteering.

Mr. Milliken: Don't quote someone else. Do you know?

The Witness: I know that I found out, knew the type of equipment he was manufacturing, yes.

The Court: It is now 3:30. We usually take a

(Testimony of John H. Clippinger.)

recess at 3:30. We will be recessed for ten minutes.

(Short recess taken.)

The Court: Proceed.

By Mr. Milliken:

Q. What in general was the type of work that Hoffman Radio Company, as known to you, was performing in the year 1943?

A. Well, the type of work that Hoffman Radio was performing in 1943 would be the type of work that we didn't solicit, because that type of work entailed too many headaches, and one we avoided trying to get. We had to have very large production items, because we had 25,000 employees and a very large company, and so we rather didn't solicit too greatly these headache contracts, because it required more engineering than it did production facilities, and everyone was extremely short of engineers. Engineers were—well, they were at a premium for government contracts, for that meant that you worked on specifications and so on and so forth, and then you were on your own, and they had an engineer. If we spent the time engineering the job, we had to have large production to justify our large plant and the several thousand employees that we had.

Q. Do you know of the efficiency or lack of efficiency of the Hoffman Radio Corporation during the year 1943?

A. To my knowledge there was nothing but very glowing [156] praise for his work and his activities.

(Testimony of John H. Clippinger.)

Q. That was known to you in the radio field?

A. It was known to me. It was told to me definitely by the Navy Department.

Q. Did you know of Mr. Walter S. Harmon in the years 1942 and '43?

A. Well, yes, I have known Mr. Harmon and known of him for many years.

Q. What is his reputation as an engineer?

A. He has a very excellent reputation as one of the better engineers of the country.

Q. It is in evidence in this case that Mr. Harmon was employed by Mr. Hoffman on a salary of \$75 a week plus one percent of the gross sales.

The Court: You mean the corporation, do you not?

Mr. Milliken: What?

The Court: Employed by the Hoffman Corporation.

By Mr. Milliken:

Q. The Hoffman Corporation, paid a salary of \$75 per week plus one percent of the gross sales. In your judgment would that be a fair and reasonable compensation basis for Mr. Harmon?

Mr. Crouter: If your Honor please, I object to the question, particularly because that does not include several facts as to Mr. Harmon's employment. I don't know [157] what period or date or year counsel has in mind. It is not shown that the witness knows anything at all about the duties that Mr. Harmon did actually perform or would perform or was contemplated to perform in the future,

(Testimony of John H. Clippinger.)

and I object to the question as merely calling for a general reputation of a hearsay character, that is to say, his reputation as an engineer, as I recall it. I do not believe that it is a proper hypothetical question, or a question of any other kind at this stage of the case.

Mr. Milliken: I think we might read, if your Honor please, the contract that Mr. Hoffman actually entered into with Mr. Harmon.

Mr. Crouter: I am talking about what the record shows that this witness knows about Mr. Harmon.

By Mr. Milliken:

Q. Well, you knew Mr. Harmon personally?

A. Yes, sir.

Q. And you knew of his reputation in the industry? A. Yes, sir.

Q. And I believe you testified his reputation was excellent? A. Yes, sir.

Q. In the year 1942 Mr. Hoffman has testified that he employed Mr. Harmon as chief engineer for his corporation on a basis of \$75 a week and one percent of the gross sales. [158] A. Yes, sir.

Mr. Milliken: I renew the question, your Honor, as to whether or not this man experienced in the radio industry, knowing the man, having in mind the basis that has been laid as to what was paid and so on when the contract started on January 1, 1942.

Mr. Crouter: I still renew my objection. I don't want to be captious about this, if the Court please, but I submit that this witness has not been shown

(Testimony of John H. Clippinger.)

to have even read the contract or be familiar with it. It has not been shown that he would know what Mr. Harmon is supposed to be, merely that he is an engineer, and he is an employee of a certain man, and the record does not show——

The Court: Just a moment. The objection is overruled and exception allowed. Answer the question. You can cross examine and attack the weight of his testimony, if you wish, by cross examination.

The Witness: I consider that Mr. Harmon must have been a real gambler to accept such a low amount for his services, because I am sure that if I had known he was available I would have hired him for a great deal more money than that.

By Mr. Milliken:

Q. Your answer would be that it would have exceeded the amount the corporation would be required to pay him, a fair and reasonable compensation would have? [159]

Mr. Crouter: If your Honor please, I object to leading questions.

The Court: Don't lead your own witness.

Mr. Milliken: I will tender the witness for cross examination.

Cross Examination

By Mr. Crouter:

Q. Mr. Clippinger, how old are you at the present time? A. 49.

Q. And you have been constantly in the radio business since 1924?

A. With the exception of one year.

(Testimony of John H. Clippinger.)

Q. What year was that?

A. It was approximately 1926.

Q. Did I understand you to say it was the Admiral Radio Company that you were with?

A. Yes, sir.

Q. What is the correct name?

A. Admiral Corporation. It was Continental Radio and Television Corporation previous to that, and they changed the name.

Q. Now as I recall you started your testimony by giving us some figures regarding the business of your corporation, and I believe you stated that that was about the year 1943, where there was approximately seven and a half million [160] dollars worth of business done?

A. 1942.

Q. It was 1942? A. Yes, sir.

Q. Then if you said 1943, or if Mr. Milliken said that, you meant 1942?

A. When he asked if I had the year end statement I thought I had the 1943, but it happens to be the 1942 year end statement.

Q. Do you have a 1943 statement?

A. Not with me, no, sir.

Q. Were all the figures of the compensation of various officers you testified to with respect to the year 1942?

A. Yes, sir.

Q. Was that the calendar year?

A. Yes, sir.

Q. In your own case, as I recall your testimony, you had about ten thousands dollars worth of dividends, and that was a part of the total compensation of about \$45,000.

(Testimony of John H. Clippinger.)

A. Between forty and fifty thousand dollars.

Q. What percentage of the stock of the corporation did you own? A. Ten percent.

Q. Ten percent, and with respect to these other officers whom you mention by position, take the vice-president in [161] charge of sales. Was he a stockholder also?

A. That was me. I was, yes, sir.

Q. That was your position?

A. That is right.

Q. Take the case of the president who got a compensation of \$50,000. Was that a salary or part commission or bonus?

A. No, that was his salary only. He had approximately 60 percent of the company.

Q. 60 percent? A. He and his family, yes.

Q. And then did he receive dividends commensurate with yours on the stock there in addition to the \$50,000? A. That is right.

Q. You mentioned another vice-president in charge of manufacturing who got \$35,000. Is that straight salary?

A. That is straight salary.

Q. Was he a stock holder? A. Yes, sir.

Q. There was no bonus or commission over and above those figures that you have given?

A. No.

Q. That was the total as far as cash compensation for services?

A. As salary, yes, not for dividends.

Q. That is exclusive of dividends? [162]

(Testimony of John H. Clippinger.)

A. That is right. That is salary.

Q. Referring to the treasurer with compensation of about fifteen to eighteen thousand dollars, was he a stockholder? A. Yes, sir.

Q. And about what percent?

A. Oh, he had about two or three percent.

Q. And was that true of your secretary?

A. Yes, sir.

Q. He was also paid fifteen thousand salary?

A. Yes.

Q. What percentage of the stock?

A. He had around seven percent I believe. You were speaking of the treasurer now?

Q. The secretary.

A. Oh, the secretary. Yes, about seven percent.

Q. Then you mentioned the assistant treasurer and assistant secretary each receiving about \$12,000. Were they stockholders? A. Yes, sir.

Q. Was the Washington representative a stockholder? A. No, sir.

Q. May I see that balance sheet that you referred to. Is that \$7,500,000 figure the total of gross sales or how is that? [163]

A. That is net sales.

Q. That is after returns and adjustments?

A. Yes, sir.

Q. That was the total gross amount of business done? A. Yes.

Q. In 1942 was the Admiral Corporation chiefly engaged on domestic orders, or did it have some governmental orders for military equipment?

(Testimony of John H. Clippinger.)

A. I believe the breakdown there will show about four and a half, three to four and a half, home receiver sales and about three million government sales. It is all in here, I believe.

Q. You might wish to check the report?

A. Yes. I can't read those things.

Q. When you referred to four and a half, you meant million? A. Yes.

Q. Would it be correct or please tell the Court whether these other officers whom you have mentioned by position in the Admiral Corporation had been with that corporation for a great many years prior to 1942. A. Yes, they had.

Q. About what would they be there, about the same time or would it be different?

A. The most of them, the majority of them had been [164] there since the organization of the original company in 1934.

Q. What was the main business of that corporation? A. Manufacturing radio receivers.

Q. Did they manufacture and assemble complete units? A. Complete units.

Q. Selling to the retail trade? A. Yes, sir.

Q. On a national scale? A. Yes, sir.

Q. Some export too? A. Very little.

Q. Mostly domestic? A. Yes, sir.

Q. Some Canadian market? A. No, sir.

Q. Now, referring to the year 1943, immediately after that, how did the volume of business in 1942 compare with 1943?

A. I don't know. I can give you a guess if you would like that.

(Testimony of John H. Clippinger.)

Q. I want something a little better than a guess. You may give me according to your best recollection.

Mr. Milliken: Mr. Crouter, if I may interrupt you, please. Here is a statement for the Admiral Corporation showing the sales for all of the years, if you would like it. [165]

Mr. Crouter: I would be glad to have it. Furnish it to the witness, since we have gone into the year 1943 to some extent and I would like to ask a few questions.

The Witness: In 1943 the net sales were \$14,149,513.

By Mr. Crouter:

Q. Do you have the net sales figures?

A. That is net sales.

Q. Do you have an adjustment there showing the amount of profit, that is your operating profit merely on your sales after deducting the cost of goods against it?

A. Profit before taxes was \$1,098,633.

Q. Is that after taking all compensation deductions and all other usual and ordinary expenses of the business? A. Yes, sir.

Q. And is that figure before payment of federal taxes or afterwards. A. Before federal tax.

Q. Is it before the state tax figure, or do you have such a thing in Illinois?

A. We don't have the same thing in Illinois. We only have a corporation tax there. We don't have an inventory tax or anything like that.

(Testimony of John H. Clippinger.)

Q. Now can you tell the Court with respect to the fourteen million dollar figure approximately what percentage of that related to government orders, what if any part of it? [166]

A. 100 percent.

Q. 100 percent governmental orders?

A. In 1943.

Q. What period did you have in mind when you mentioned this hundred million dollar figure?

A. The total government contracts from the time we started our government business until the conclusion of the government contracts.

Q. Can you give us the months and years on that?

A. Well, we had \$40,679,000 in 1944, \$30,533,000 in 1945, \$31,169,000 in 1946.

Q. Referring back to 1943, can you tell the Court in a general way whether the 1943 salary schedules of the principal officers there continued through substantially the same in 1943, or whether there was any substantial change?

A. Yes, they remained the same, because we were not permitted, according to law, to make any increases. It had been our habit previous to that time in the ten years to always—every time we had a successful year we would raise salaries.

Q. Referring to your testimony regarding the positions of Messrs. Hoffman and Harmon in the Mission Bell Radio Manufacturing Company about August 4, 1941, just exactly what did you consider in your testimony here the business and the future

(Testimony of John H. Clippinger.)

business of the Mission Bell Corporation to have [167] been on December 4, 1941, in other words, its business outlook?

A. I would say they had no outlook. That would have been my opinion, sir.

Q. So that any percentage of gross would be practically nothing. Is that the way you looked at it?

A. Well, if I may explain it in my own words, I made at least four or five trips a year to the Pacific Coast contacting my salesmen, and I was in every state in the country three or four times a year, knew the radio business, had to know it in my position, and I knew that the only reason for the existence of Mission Bell a couple of years previous, that they had a contract from Sears Roebuck, and knowing that Sears Roebuck had cancelled them out, because one of our largest customers were a big account similar to Sears Roebuck, like Western Auto Supply, Kansas City, B. F. Goodrich Rubber and other large users of radios, so was very familiar with the contract business, and I knew when Sear's account was switched there was something wrong with the company if they cancelled out, and there was no hope for them.

Q. I believe you testified that you considered the three percent too low for the company as it then existed, is that right?

A. I would consider it extremely low, sir.

Q. And still you testify that is fair and reasonable compensation? [168]

(Testimony of John H. Clippinger.)

A. If I may use my own words, I think anyone would be very foolish to accept a position on that basis.

Q. That was because you considered that that corporation at that point really had lost good will and lost business, just didn't have any future?

A. That is very true. They had nothing.

Q. You didn't consider it on the basis of a company which had a potentially great opportunity with government war orders? A. No, sir.

Q. Because you yourself and apparently the Hoffman Radio Corporation didn't know there would be such a thing on December 4, 1941?

A. That is right, sir.

Q. That is the basis of your testimony?

A. That is right, sir.

Q. Would you consider three percent of gross sales or the gross amounts received and expended for government contracts which would total approximately \$14,00,000, 100 percent government orders, to be fair and reasonable?

A. Well, that wouldn't be the question at that time, sir. It would have been a question only of whether the three percent was all right or not. There were sales representatives in Washington on a five percent basis. We didn't realise that the volume would run into many, many millions. There [169] was no way of knowing that the volume was to reach that big, but if we had entered into a contract we have been obligated to fulfill it.

(Testimony of John H. Clippinger.)

Q. In other words, you just look on it as a contract entered into and you consider it fair and reasonable?

A. Well, if it failed, they would have lost nothing. That is life. That is business. It was a gamble.

Q. You had no one in the Admiral Corporation who received income of three percent that year on \$14,000,000 for 1943 business, did you?

A. No, sir. I had lots of salesmen out in the field, and I was paying them as high as five percent in 1941. I had boys who were making \$45,000 a year as commissions.

Q. This was on domestic business?

A. On domestic business. Some were drawing more than I was drawing.

Q. Had you on or before December 4, 1941 talked to Messrs. Davidge and—I will give you his full name now.

A. I never met the gentleman, Mr. Davidge.

Q. G. Gifford Davidge.

A. I never met the gentleman.

Q. Had you ever met Walter D. Douglas?

A. Yes, I had.

Q. Had you ever before December 4, 1941 discussed with Mr. Davidge, Mr. Douglas and Mr. Hoffman as to what they [170] proposed for the corporation, the Mission Bell or Hoffman Radio.

A. The question is did I talk to them before 1941?

Q. Yes.

(Testimony of John H. Clippinger.)

A. No, sir. I never knew any of those gentlemen before then.

Q. When did you first become familiar with what happened in the reorganization of this company and the change to Hoffman Radio and so forth.

A. I knew nothing about it at that particular moment. To me it was still Mission Bell. I heard about Hoffman taking it over and met Hoffman at the Navy Department many times during the course of the war.

Q. That was sometime subsequent to December 4, 1941.

A. Yes, sir.

Mr. Crouter: That is all, thank you.

Redirect Examination

By Mr. Milliken:

Q. Now, Mr. Clippinger, counsel has asked you the hypothetical question on the three percent of gross sales, looking at December 4, 1941, that Hoffman entered into this contract. If Hoffman could make that company successful, would your opinion be the same, that three percent was reasonable, whatever the sales might be.

Mr. Crouter: If your Honor please, I object to that [171] on the ground it is wholly speculative.

Mr. Milliken: Yours was just as speculative as mine.

The Court: The objection is overruled.

The Witness: Will you ask me that again?

The Court: Read the question to the witness.

(The question was read.)

(Testimony of John H. Clippinger.)

The Witness: I still think it would be a very reasonable deal for the company.

Mr. Milliken: That is all.

Mr. Crouter: No further questions.

The Court: Call your next witness.

Mr. Milliken: Mr. Tuttle.

The Court: Now is the last witness excused by both sides?

Mr. Crouter: That is correct.

The Court: The witness is excused from further attendance.

(Witness excused.)

Whereupon,

JAMES M. TUTTLE,

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Tell us your name, please, Mr. Witness. [172]

The Witness: James M. Tuttle.

Direct Examination

By Mr. Milliken:

Q. Where do you reside?

A. 1084 Clarendon Crescent, Oakland, California.

Q. In what business are you engaged?

A. Presently sales manager of Motorola, Incorporated.

Q. What business is Motorola, Incorporated engaged in?

(Testimony of James M. Tuttle.)

A. We are manufacturers of home and auto radio receivers and two way communication equipment.

Q. How long have you been employed or connected with the Motorola Corporation?

A. Two years.

Q. What business were you engaged in prior to that time?

A. Two years in the United States Navy and——

Q. Prior to that time?

A. 15 years with the Radio Corporation.

Q. Radio Corporation? A. Of America.

Q. Of America? A. Yes, sir.

Q. In what business are they engaged?

A. They manufacture all types of electronic equipment.

Q. In the year 1941, what were your duties and where were [173] you stationed in your employment with the Radio Corporation of America?

A. In 1941, late in the year, I was moved from the west coast, where I had been in the continuous employ of the Radio Corporation for nearly 15 years, to Chicago, Illinois, to take up the management of distributing the products of that company in that city.

Q. What were your duties?

A. The distribution of Radio Corporation products within the Chicago area.

Q. Were you familiar generally with sales contracts prevailing in the radio industry for the sale of merchandise? A. Yes, sir.

(Testimony of James M. Tuttle.)

Q. What was the prevailing custom? Was it on a fixed salary or salary plus commission or incentive basis or what was the prevailing basis?

A. The prevailing basis at that time was a salary plus bonus or commission rates.

Q. Did it also include a straight salary plus a percentage of gross sales.

Mr. Crouter: If your Honor please, I object to that as leading.

The Court: Objection sustained.

By Mr. Milliken:

Q. Salary plus bonus and commission. What would the [174] bonuses be based on?

A. Sales or profit performance of the company.

Q. And what would the other type of compensation be based on?

A. The worth or the measurement of the man to the company at that particular time.

Q. Were you acquainted with a corporation known as the Mission Bell Manufacturing Company in the year 1941?

A. Yes, sir, as a distributor of radio products here on the coast.

Q. What was their standing, if you have an opinion in that regard?

A. Let me say not as a reputable manufacturer.

Q. And what factors entered into your conclusion of such a standing on their part?

A. Their contacts with the trade, the type of product that they built at that time, plus their financial status.

(Testimony of James M. Tuttle.)

Q. Have you heard the testimony of Mr. Clippinger who preceded you? A. Yes, sir.

Q. Did you hear the hypothetical question that I asked him with respect to the condition of the Mission Bell Radio Corporation in 1941?

A. Yes, sir.

Q. Do you have those factors clearly in your mind? [175] A. Yes, sir.

Q. Well, based upon the factors which I asked Mr. Clippinger with respect to the Mission Bell and its standing, do you consider the contract which the Mission Bell made on December 4, 1941, with Mr. Hoffman a reasonable or unreasonable contract for compensation?

Mr. Crouter: If your Honor please, I object to this. I assume that the witness probably heard the prior testimony and I believe that his testimony should be based upon things that he has learned from this record and things that he knows of his own knowledge. I don't want to prolong the time of the hearing, but I submit that is too much of a short cut. I don't believe it is a proper hypothetical question.

The Court: I think not, except to this extent: I am not sure that this witness is sufficiently conversant with what the contract contains. I think you should inform him in that regard.

By Mr. Milliken:

Q. There has been stipulated into the record, Mr. Tuttle, in this case, the letter of employment of Mr. Hoffman, whereby he employed Mr. Har-

(Testimony of James M. Tuttle.)

mon, and that letter is on a basis of a salary of \$75,000.00 per week plus 1 percent of the gross sales of the company.

Mr. Crouter: You don't mean \$75,000.00 do you?

By Mr. Milliken:

Q. \$75.00 a week, plus 1 per cent of the gross sales of the company on an annual basis, and it has also been stipulated that that contract on that same basis was renewed in the year which was ended—it was entered into January 1, 1942, and was renewed for the year 1943, and that Mr. Harmon was paid 1 per cent of the gross sales in addition to a weekly salary of \$75.00 per week, and Mr. Hoffman entered into a contract with Mission Bell on December 4, 1941, which has been stipulated and is in the record, whereby he was to get 3 per cent of the gross sales of the company plus a fixed salary, and in the year 1943 he received \$8800.00 as a fixed salary and \$54,000.00 as 3 per cent of the sales.

Looking at December 4, 1941, when Mr. Hoffman entered into this contract with the corporation, based on the facts which you have heard as propounded to Mr. Clippinger, in your judgment was that a reasonable basis for compensation?

A. Most reasonable.

Q. Do you know of the work which the Hoffman Radio Corporation did during the year 1943?

A. Yes, sir.

Q. In what manner did you learn of that work?

A. I was an assistant, I was a lieutenant and assistant [177] to the head of the production depart-

(Testimony of James M. Tuttle.)

ment of the electronic division of the Bureau of Ships, Navy Department, Washington, D. C. and thereby learned at first hand the capabilities and the facilities of all radio manufacturers in the United States.

Q. What did you learn with respect to the reputation of the Hoffman Radio Corporation?

A. The Hoffman Radio Corporation earned a considerable reputation for the Navy Department, to such an extent that they were one of our key prime contractors in later years, having earned that reputation.

Mr. Milliken: That is all.

Cross Examination

Q. (By Mr. Crouter): Lieutenant, will you please tell the court exactly where you were located or what your post of duty was on December 4, 1941?

A. I was not in the Naval service yet on December 4, 1941. I was with the RCA-Victor Distributing Corporation, Chicago, Illinois.

Q. And that was after your transfer from here east, as you have testified?

A. From the west sir, to Chicago.

Q. From the west. At that time had you met Mr. Harmon personally? [178]

A. No, sir, I did not know Mr. Harmon.

Q. Did you know Mr. H. L. Hoffman, who is involved in this case?

A. December 4, 1941? No, sir.

Q. You just knew generally of the Mission Bell Radio Manufacturing Company by reputation?

(Testimony of James M. Tuttle.)

A. And as a competitor to the products that I had charge of here on the west coast.

Q. Have you yourself read the employment contracts between the Mission Bell Radio Manufacturing Company, which later became the Hoffman Radio Manufacturing Corporation?

A. No, sir.

Q. Between the corporation and the two individuals mentioned, Messrs. Hoffman and Harmon?

A. No, sir.

Q. All you know about this case is really what you have just heard here in court?

A. Just what has been reviewed, yes, sir.

Q. You never had any official business dealings with them in 1941?

A. No, sir, not in 1941.

Q. Please tell the Court what you consider the future field of business of the Mission Bell Radio Manufacturing Corporation to have been on December 4, 1941.

A. Practically at a zero, sir, and that may be measured [179] by the fact that all the radio companies at that time were doing an exceptionally fine business. 1941 was one of our good years in the industry, and Mission Bell had fallen, both in manufacture and reputation, to probably the all-time low in their history. That is a supposition.

Q. Did you know at that time, Lieutenant, whether it had any license agreement with the RCA?

A. Yes, sir.

(Testimony of James M. Tuttle.)

Q. Did you know whether it had any contract with any of the people representing the old Mitchell Hughes Manufacturing Company?

A. Not specifically, no, sir.

Q. You didn't know anything about that.

A. Generally, not specifically.

Q. Do you know whether the Mission Bell had any contractual rights or arrangements whereby it might facilitate its continuing to do any radio business on December 4, 1941? You know nothing about that?

A. Not specifically so, no.

Q. Do you know whether the Radio Corporation of America had any contract with any high-salaried official on the basis of 3 per cent of the gross sales?

A. Not specifically, no, sir.

Q. Never heard of any such contract, did you, read about it or knew about it in an authentic way? [180]

A. Our compensation was determined by the board of directors of the company, and the amount of money that we received had no connection—it was for the executive sales management group of all types at the end of any fiscal year. That was peculiar, incidentally, to the Radio Corporation of America.

Q. Did they have sort of a bonus arrangement based on the amount of business done?

A. Yes, sir.

Q. And it would be determined near the end of the year?

A. Yes, sir.

Q. By the board of directors? A. Yes, sir.

(Testimony of James M. Tuttle.)

Q. What about the Motorola Corporation? Did it have any agreement with any high officials or officers that you knew of at the end of 1941 providing for compensation of as much as 3 per cent of the gross sales of the Motorola Corporation?

A. I would rather not be limited to the figure of 3 per cent, but the reason why I left the Radio Corporation subsequently for the Navy was because of their bonus arrangement and the volume of business done in my particular territory, and I have heard very substantial figures read off with respect to payment by Motorola, then the Galvin Manufacturing Corporation. [181]

Q. Do you know whether any of that amounted to as much as 3 per cent of gross sales?

A. I would say yes, sir.

Q. Do you know what the gross sales of Motorola would be, approximately, for the year 1941?

A. Approximately in 1941 \$9,000,000.00.

Q. Do you know who that official was?

A. There were probably a group of officials, Mr. Paul Galvin, president; Mr. Elmo Wavering, vice-president.

Q. They were also stockholders?

A. Yes, sir.

Q. Substantial stockholders? A. Yes, sir.

Q. And they were on the board of directors, I assume? A. Yes, sir.

Mr. Crouter: That is all.

Mr. Milliken: That is all.

The Court: Is this witness excused by both sides?

(Testimony of James M. Tuttle.)

Mr. Crouter: That is agreeable to me.

Mr. Milliken: Yes.

The Court: You are excused from further attendance.

(Witness excused.)

Mr. Milliken: Mr. Harmon. [182]

Whereupon,

WALTER S. HARMON

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Tell us your name, Mr. Witness, please.

The Witness: Walter S. Harmon.

Direct Examination

By Mr. Milliken:

Q. Where do you reside, Mr. Harmon?

A. 4025 McClung Drive, Los Angeles.

Q. In what business are you now engaged?

A. Engineer and sales representative. I represent approximately 10 eastern companies in an engineering and sales capacity on the coast.

Q. Are you in business for yourself or are you employed?

A. I have what is known as the W. S. Harmon Company.

Q. What business is that engaged in?

A. Well, it is, as I say, engineering and sales representation.

Q. How long have you been so engaged in that business? A. Since June of 1946.

(Testimony of Walter S. Harmon.)

Q. Where were you employed, if you were, prior to June, 1946? [183]

A. Immediately prior to June of 1946?

Q. Yes. A. Hoffman Radio Corporation.

Q. How long were you employed by the Hoffman Radio Corporation?

A. From January of 1942.

Q. To June of 1946? A. That is correct.

Q. How long have you been in the radio engineering business, Mr. Harmon?

A. My first recollection as an engineering capacity would be in 1926.

Q. Will you please start in 1926 and bring yourself down to January of 1942, your employer, if you had an employer, your position, if you had a position, your compensation and your duties?

A. Well, in 1926 I was engaged as a radio engineer in the research laboratory of the Music Master Corporation, Bettswood, Pennsylvania. I was there until April of 1927. My salary, I believe to be around \$35.00 a week at that time.

Q. What business were they engaged in?

A. Radio manufacturing.

Q. Then you were there, you say, until 1926?

A. 1927.

Q. 1927. [184]

A. In 1927 I went with the Distanttone Radios, Incorporated, in Linn Park, Long Island. My duties there were in charge of engineering and also some production supervision, and my salary there, as I recall, was in the \$40.00 to \$50.00 bracket, as I recall. I started at \$40.00 and later received \$50.00 a week, that is.

(Testimony of Walter S. Harmon.)

Q. Were there any people under your supervision while you were working at the Distanttone Radios Company?

A. Distanttone, yes. We had approximately, I would say, 25 to 30 employees, and the majority of them reported to me.

Q. When you ceased working for Distanttone, then who were you employed by?

A. Distanttone then took over the bankrupt company known as the A. C. Electric Company of Dayton, Ohio, and reorganized it to the A. C. Dayton Company, and that was in 1927, I don't remember what month, and I went to Dayton with them in charge of engineering.

Q. What business were they engaged in?

A. Manufacturing radio receivers.

Q. Were there people under your supervision there?

A. Well, we had a larger organization there. I had three men under me in the laboratory there. The salary was, as I recall, \$50.00 a week.

Q. How long did you remain with that company? [185]

A. Until 1928.

Q. Whom were you next employed by, if you were?

A. In 1928 I went with the Dayfan Electric Company in Dayton, Ohio. They were engaged in the manufacture of radio receivers, as well as electric fans and motors. I was in an engineering capacity there. Again I had anywhere from two to three engineers reporting to me at the time I went there. The salary, however, was lower there. As I

(Testimony of Walter S. Harmon.)

recall, I started for \$35.00 a week. Dayfan Electric Company about a year later was taken over by the General Motors Corporation, or rather a new corporation was formed which was known as General Motors Corporation, General Motors owning 51 per cent of the stock and Radio Corporation of America 49 per cent, and that was a \$10,000,000.00 corporation.

We had an engineering department of approximately 65 people. I had various jobs there, heading up design groups. I first had what was known as the radio frequency group, that were involved in the development of the radio frequency portion of a receiver, later headed up the advance development group, with four engineers reporting to me, and later headed up the household receiver division, in which I had all engineers reporting to me responsible for the design of household receivers. General Motors Corporation manufactured both household receivers and automobile receivers.

Q. How long did you—— [186]

A. That was 1932, as I recall, February of 1932.

The General Motors Corporation ceased operation at that time, and I went to Chicago and was employed by the Zenith Radio Corporation in charge of automotive radio receiver design. I had three engineers reporting directly to me, and inasmuch as Zenith was a rather finely integrated organization, that is, they had a drafting department, metal shop and so forth—the design groups took advantage of those facilities, and at Zenith I re-

(Testimony of Walter S. Harmon.)

ceived, my memory is not clear, either \$60.00 or \$65.00 a week.

While at Zenith I developed what was then known as the first single auto radio, that is where the receiver and speaker and power supply was all contained in one unit. In the development of such a receiver I developed means of suppressing vibrator interference, which had precluded the use of self-contained power supplies up to that time, and as the result of that, and the Zenith Company being in a rather hard financial position in 1933, I went with the Utah Radio Products Company as a field engineer.

My duties there were to contact the various companies that Utah sold components to. They were engaged in the sale of radio components that they used, and it was my duty to try to acquaint engineers with our components and also help them in the application of the components to use on their products, their products in each case being [187] automobile receivers. My compensation, as I recall, at Utah was the same as I received at Zenith, and as I say, my memory is not clear, either sixty or sixty-five, a week, from Utah Radio Products. That brought us up through 1933, didn't it?

I went with General Household Utilities in the automotive receiver division as project engineer, having approximately three engineers reporting to me at that time. The work which I was concerned with was the design of automotive receivers. During that period General Household Utilities was sole supplier of automotive receivers to the General

(Testimony of Walter S. Harmon.)

Motors Corporation, which included Buick, Olds, Pontiac, and also the United Motor Service group. My mind is not clear on what my salary was, but it would have been at least what I made at Utah.

In 1934 I went to work for Emerson Radio and Phonograph Corporation in New York City, who were engaged in the manufacture of home radio receivers, and after a short period I became chief engineer. I headed up their entire engineering activities at a salary, as I recall, which started at \$75.00 a week and later that was increased slightly, although I don't recall the figures.

Q. Emerson Radio, in what business were they engaged, manufacture of radios?

A. Radio receivers, yes. They are a nationally known [188] organization. At that time our peak production was in the neighborhood of 4000 receivers a day.

Q. 4000 a day?

A. In 1936 I came with Mission Bell Radio Manufacturing Company in Los Angeles, again to head up engineering. However, my duties were somewhat broader there, it being a small company, and I also did a certain amount of production supervision. My salary there was on a basis of \$50.00 a week and 10 cents on each receiver sold.

Q. In other words, you got, in addition to the \$50.00 a week, 10 cents for each set sold?

A. That is correct.

In 1940 I went with Mitchell-Hughes Company, what became known as the **Mitchell-Hughes Company** headed up by a gentleman by the name of

(Testimony of Walter S. Harmon.)

Alex Hirsch whose program was to develop and manufacture a high-quality radio phonograph combination. When I went with Mr. Hirsch he agreed to give me 50 per cent of the net profits of the company, without any capital investment on my part. My compensation there initially, as I recall, I went in on a consulting basis and then later went in at a salary of \$100.00 per week, with the understanding that I was to receive 50 per cent of the net profits, and also I was to receive stock in the company, upon its incorporation.

Unfortunately, Mr. Hirsch died before that ever was concluded, with the result that I operated the Mitchell-Hughes Company for the estate of Mr. Alex Hirsch until 1941, just in the latter part of 1941, at which time it was decided to liquidate, and I left and was trying to find a location when I was approached by Mr. Hoffman on joining the then Mission Bell Radio Manufacturing Company.

Q. When did Mr. Hoffman, if you remember, approach you with respect to joining the Mission Bell under his leadership?

A. Well, it was, I believe, December of '41, 1941.

Q. Did you have a discussion with him with respect to prospective employment with his corporation?

A. Yes, we had quite a discussion. Mr. Hoffman approached me on the matter and, as I recall, we had two discussions. I was not very enthusiastic about it, due to the fact that I knew the

(Testimony of Walter S. Harmon.)

problems of the Mission Bell Company, having been with it, and also seeing in the years after I had left its gradual depreciation, and I could not see where we had much to go on, so I was not very interested the first time.

After further discussion, Mr. Hoffman outlined his ideas, also the fact that he had Mr. Davidge and Mr. Douglas who could lend financial support to any program that we would go into, within reasonable limits. Mr. Hoffman's ideas intrigued me, and the result was I entered [190] into the contract which has been stipulated here.

Q. And what was that contract?

A. A salary of \$75.00 a week and 1 per cent of the gross sales.

Q. At the time you and Mr. Hoffman discussed that agreement, did you discuss any other means or types or bases of employment?

A. I was not interested in anything other than an incentive program, because that would be the only thing that would be reasonable. Obviously Mission Bell Company at that time was in no position to pay a salary such as I was entitled to, so that the best way for me would be to be on an incentive basis.

Q. I understand you to say that would be the only basis upon which you would have accepted it?

A. That is essentially correct.

Q. Is Mr. Hoffman related to you by blood in any way? A. No.

Q. Or by marriage?

A. Not that I know of.

(Testimony of Walter S. Harmon.)

Q. Do you own or have you ever owned any stock in Mission Bell or in Hoffman Radio?

A. No, sir.

Q. In the year 1943, you owned no stock in the Hoffman Radio Corporation? [191]

A. I did not.

Q. As I understand it, then, you agreed with Hoffman in January of 1942. Did you then begin work for the Hoffman Radio Corporation?

A. Yes.

Q. And did you remain in their employ in 1942?

A. I did.

Q. And in the year 1943? A. I did.

Q. Did you have any other employment in either of those years? A. No, sir.

Q. You devoted your entire time to their affairs, is that correct? A. Yes.

Q. And during that time, during 1942 and 1943, you were the chief engineer of the corporation, is that correct?

A. I went in originally, I believe, as chief engineer, and later was appointed vice-president of the company.

Q. I show you a book entitled "Hoffman War Time Radio Equipment," and I will ask you if you can go through that book and the various inventions or contracts that the Hoffman Radio Corporation had during the years 1942 and 1943, explaining what you did with respect to each invention and the novelty of the invention, if there be such. [192]

(Testimony of Walter S. Harmon.)

A. I wonder if I might have permission to define an engineer's duty in a corporation of this size?

Q. Well, you can define your duties. What were your duties with the Hoffman?

A. A lot of people think that engineering ability is reflected by the patents held. I as an engineer, having spent all my useful life, you might say, in this business, never considered engineering as resulting in patents. I have a couple of patents of my own, but I do not think that they represented a great contribution to the art on my part. An engineer's duty is to make something, a product which you choose to manufacture, to take art which is already known and develop a product.

Now, in the development of that product there may not be anything of a patentable nature. However, it is a very vital part of developing its product for the company. Now, take like this variable condenser which has been discussed, the variable condenser contracts. I don't think there is anything patentable on the thing. However, it was a component which was needed very badly by the Bendix Aviation Corporation. The known condenser manufacturers at that time would not have anything to do with it. It is a difficult item to produce. I believe Mr. Hoffman stated that the plates on this thing are soldered into the shaft, whereas, the normal means was to put them on there and swage them, or in cases assemble [193] them with spacing washers. The fact that the condenser was made out

(Testimony of Walter S. Harmon.)

of brass and due to the conditions under which it had to operate you had to solder those plates on, so brass being a very good conductor of heat, you could not get the solder to flow and to weld these plates onto these shafts. So rather than spending engineering time on developing a unit, we had to spend engineering time on developing procedures to manufacture this unit.

As an example of this, we knew that we could not apply enough heat with a soldering iron to bring those up to temperature, because brass being a good conductor of heat took the heat away almost as rapidly as you put it in there. The way this was finally accomplished was through development of jigs, taking it over a heated flame, the jigs were hot enough they were practically at soldering temperature, just below soldering temperature, and the final operation was performed with special irons that we developed to use to apply the heat in the right places for the soldering. After the soldering was through, then the iron was taken away and they remained to the point of where the solder solidified and then they were removed from the jigs, and that is the type of engineering which went into anything like this.

Another case was——

Q. May I interrupt you there, Mr. Harmon? You had the specifications from Bendix, did you not, with respect to [194] what they wanted?

A. That is right.

Q. Was it a job, then, on your part of merely following those detailed specifications?

(Testimony of Walter S. Harmon.)

A. Oh, no.

Q. What was your task to deliver the completed article?

A. Well, the specifications covered a condenser. In other words, it gave the capacity range, gave us the capacity of the condenser and gave the physical size and the application of the condenser.

Now, it is true we had drawings on the plates and we knew the plate shape and we knew the end plate design and so forth, but that was the smallest part of the job. As I say, the job was to develop methods whereby they could be produced.

Q. Did you do that at Hoffman Radio?

A. We had to do it, Mission Bell Radio at that time. As an example, those plates on this condenser were all gold plated. Well, there were no gold plating facilities in the Los Angeles area for handling units of this type. Normally the gold plating operation is for costume jewelry, usually small items. Here we had pieces of equipment it was very difficult to apply gold plating to. It was very difficult to do in between the plates and we had to work with organizations—as a matter of fact, we found no established gold [195] plating organization to do this job, but we found an electro plater, discussed our problem at great length, gave our own ideas as to how it could be accomplished, and this one supplied plating facilities to produce it for us.

Q. Will you take another typical contract which you had during the years 1942 and 1943 and explain it briefly to the Court, having in mind the

(Testimony of Walter S. Harmon.)

contribution, if there was such, by you as the chief engineer and by the Hoffman Corporation?

A. Well, the kite, I think, was a good example. After all, there was no knowledge as to building an antenna kite which would satisfy those requirements. The purpose of the kite was to lift approximately 300 feet of wire into the air to serve as an antenna for this rescue transmitter previously described.

The kite was therefore to be very efficient, since it would have to be launched from a life raft in the ocean. The stipulations were that the kite should be able to be launched from a life raft in a wind velocity of seven miles an hour. That is very little wind. Also, the kite had to withstand winds in the neighborhood of 45 miles per hour, which is a very destructive wind. The specifications given, that Bendix had on this kite, the kite could not have been produced. I think we made many contributions to this. The original kite used chrome molybdenum tubing, which is very [196] difficult to fabricate and very difficult to procure. During the process of these contracts we developed the use of stainless steel tubing.

Also the original plans were to have this kite in one piece, which required storage in a cardboard container approximately 3 inches in diameter, and since the thing, as I recall, was 36 inches long, the tube was that long, it was rather inconvenient to pack into an airplane, so we evolved means of putting the kite in two sections, which resulted in put-

(Testimony of Walter S. Harmon.)

ting it in a tube approximately 18 or 19 inches long, packing the container with 6 tubes forming the skeleton work of the kite.

One of the requirements of this kite was that if you attempted to launch it and you hit a down-draft and it hit the water, it was supposed to float. The kite cloth was waterproofed. In addition, it also had small boxes of kapok in it to make it more buoyant. However, the tubes themselves would take in quite a lot of water. There were rather elaborate ideas on that. One was to stuff cotton down each end of the tube and pour hot wax down, which was purely impractical from a production standpoint. It was accomplished merely by using small corks, which sounds simple now, but meant doing at the time something nobody ever heard of.

We also developed clips for holding the cloth onto the tubing, which was quite a factor in the production of a [197] good kite. Originally it was thought that they could be put on with small clips that were soldered on these bars, through the cloth and pinned it there. That was not good due to the fact that it would puncture the cloth with it when the cloth was put on, besides they were too delicate to be soldered onto the main tubing. As the result I personally designed the present or the final form of clamp which holds the cloth on there. That is an example. I mean, undoubtedly one could have obtained a patent on that clamp, but what value the patent is, I don't know, because I don't imagine very many people are using those peculiar types of kite today, but this was an example of a project

(Testimony of Walter S. Harmon.)

that they undertook on which there was no prior art to go back to. I mean you could read all the articles in the world on box kites and you still would not find anything saying how to build a kite to serve this purpose.

Q. Now, you are relating this only to the years 1942 and 1943, aren't you, Mr. Harmon, the things that you have explained?

A. Yes, that is right. We developed what was known as the A-62 phantom antenna, which went into tanks, reconnaissance cars and so forth, the purpose of the antenna being to allow the adjustment of a transmitter, final adjustment of a transmitter without radiating a signal.

I might explain a radio transmitter cannot be just [198] turned on and you start transmitting. There is a warm-up period and final adjustment of frequency and so forth, and in combat areas, of course, they don't want any signal on the air until they are actually ready to shoot, which means that you had to have means of doing this adjustment on the transmitter, and that was the purpose of the A-62 phantom antenna. That was worked out in conjunction with the U. S. Signal Corps laboratory at Fort Monmouth. There we had drawings available. However, they were more to indicate a principle rather than a final design. It was our job to design the unit which could be produced in production quantities to meet the specifications as set up by the U. S. Signal Corps. That again, I think there was **nothing obtainable on it. Certainly** if there was, no one bothered about it, but there were

(Testimony of Walter S. Harmon.)

techniques developed for the production of that unit, much the same as in the variable condenser.

In the same way we also produced what was known as the A-58 phantom antenna, whose function was the same as the A-62. However, it was for a much different type of transmitter. It was for ground stations and so forth. There again we were given a design. However, due to material shortages and time the design could not be reproduced, so it was necessary to redesign into materials that were available. As an example, the front panel and so forth were made of aluminum on previous models. We went to steel, with proper finishing to prevent rusting, which incidentally was to meet [199] salt spray specifications and so forth of the Army. On that unit we also developed local sources and worked with them on the steatite components which went into it. We also tooled completely for the parts that went into it, that is, all the mechanical parts.

Some of these I can't remember the contract dates. I do know that we entered into a contract with the U. S. Navy in 1943 for LM type frequency meters. At that time there was a very serious shortage of the frequency meters. They had one source of supply in Maryland, who were very considerably behind on deliveries. The LM frequency meter, I might point out, is the equipment that was used as a frequency standard. The purpose of it was to allow the accurate adjustment of frequency of either a transmitter or receiver for communication

(Testimony of Walter S. Harmon.)

purposes. It was a very difficult piece of equipment to build. Each individual instrument had 4000 calibrations, any one of which had to be within 1/100th of 1 per cent accuracy, 1/100th accuracy is very difficult to attain, and not only that, it had to maintain that accuracy throughout a temperature range of 35 below zero to 65 degrees—I am speaking of the centigrade scale now. That was precision manufacturing, and there again there is very little that you could obtain on it.

The original piece of equipment had been evolved during World War I, and it was rather to find out how we could [200] produce in mass quantities precision equipment. This equipment had to be produced in large volume at accuracies greater than the average laboratory equipment that was used. As an example, the variable condenser which is attached to the dial in the equipment had a gear train on it in which the accuracy required on backlash, which was lost motion in the gears, was five times greater than the usual precision condensers which were used as laboratory standards, yet we had to maintain that accuracy in order to meet the final specified accuracy of the total equipment. That took a great deal of work with outside suppliers, particularly machining facilities. We also had to develop inspection facilities for the components when they came in to determine if they were within our required accuracy.

Q. If I may interrupt you, Mr. Harmon, there has been Exhibits 3 and 4 introduced. I show you a

(Testimony of Walter S. Harmon.)

copy of them, the orders in each of the years, which may help you in explaining the work which you handled as engineer.

A. Well, I notice there is on here—would you like to continue with this frequency meter discussion?

Q. Yes.

A. The frequency meter itself had to use a standard of frequency, which was a crystal. The crystal accuracy had to be maintained at 1/10,000ths of 1 per cent. The original supplier of the equipment had waivers on Navy inspection that [201] allowed the equipment to go out by a specified tolerance in case it was tilted. That meant if it was in an airplane and if the airplane went in a bank at the time the operator was trying to set the frequency, he would have been off frequency. Through working with a laboratory here which had never produced crystals, however, they did know quite a lot about quartz, we evolved a design which maintained its accuracy regardless of position, so in the end result our equipment was more stable and more accurate than that previously purchased by the government.

There was another serious matter in this particular piece of gear, in that any component used in our equipment had to be electrically and mechanically interchangeable with that produced in Maryland, yet we could not use the same suppliers. As I recall the contract, we had to—I do not know the exact percentage, as I recall it was 60 per cent of the components from west coast suppliers. There

(Testimony of Walter S. Harmon.)

was scarcely any of those components that were standard equipment with our normal component suppliers, which resulted in most of our engineering time being spent helping our suppliers produce the components for us.

The frequency meter, as I recall this thing, was tooled and produced in approximately six months, whereas other suppliers on the same type of equipment, not necessarily the same thing, but in the Army frequency meter, had spent [202] a year, a full year in putting it into production at a much higher cost, and inferior inspection equipment. Also there was a complete series of LM frequency meters produced, LM-14 for airborne equipment, LM-15 for land stations, LM-16 for reconnaissance groups or landing operations and the LM-17, which was the panel model, which was for use in the field office.

In the development of this equipment the main problem was calibration. I took, as I say, three to four thousand calibrations on each equipment, and they had to be within a specified accuracy of 1/100th of 1 per cent. The equipment, incidentally, covered a range of 125 kilocycles to 20 megacycles. In order to calibrate it we had to—the calibration had to be based on a given temperature, because a few degrees change in temperature would obviously change the calibration of the instrument. The stipulated temperature was 20 degrees Centigrade, which was 68 degrees Fahrenheit, so we had to produce a room which would accommodate any number of people from 1 to 20, the room had to be main-

(Testimony of Walter S. Harmon.)

tained at that temperature within 1 degree, and more than 1 degree variation in room temperature would have thrown the calibrations off, and as I say, where you have 20 people, people move, leave the room or come in, it is very hard to maintain such a temperature. It was accomplished, with a great deal of time and effort given to it. [203]

Then the previous supplier of this equipment had approximately \$200,000.00 worth of equipment for generating test frequencies. Obviously, we could not do that, at least if we were going to get frequency meters in any reasonable period of time, so we evolved different methods of producing our standard frequencies which allowed us to maintain calibration to only one frequency standard which was checked practically hourly with the Bureau of Standards Station WWV at Washington, which puts out the standard frequencies. We developed the means of piping those frequencies to the various test positions set up with equipment where the calibrating could be done by girls merely after a short period of instruction.

I might point out that, as I say, there were 4000 calibrations on the instrument. 400 calibrations were actually recorded on each instrument by the girls, and we in working with the adding machine helped evolve a tabulating machine which would interpolate the 400 figures which we gave it into 4000 and still maintain accuracy, and that, of course, resulted in a saving to the Navy Department in the building of the equipment and getting the equipment out.

(Testimony of Walter S. Harmon.)

Q. How much did that reduce personnel from what had been required prior to that to do it with?

A. I can't answer that. I did know the figures, but I am sorry, I don't know. [204]

Q. There was very definitely a great reduction, did you say?

A. Yes. Normally those 4000 figures were all typed in on a typewriter. This equipment was put on an adding machine, and you see the girl put the first significant figure in on the adding machine with the next, pulled it, and then would pull it down ten times and it would automatically print the correct figures in there, so a girl could print a tape on one of those machines in 25 per cent of the time that it would have taken by a typewriter.

Q. Mr. Harmon, would it be accurate to say that in the years 1942 and 1943 the Hoffman Radio Corporation was not a mere assembler of parts—I will withdraw that.

Go ahead and explain the rest of the inventions.

A. Well, the frequency meter was the largest product—the largest project, I think we entered into with the government. It was the most difficult one, certainly, and as the result of our work the frequency meters finally came off the critical list, and subsequent contracts were on a competitive basis. We received the greater percentage of them from the Navy Department. I believe that we also refunded to the Navy Department some money even on the original contract.

The Court: It is now a quarter past 5:00. Can you give me any idea as to how much more time

(Testimony of Walter S. Harmon.)

you will take? I am not hurrying you now at all. This is not the kind of a [205] case to hurry, I think.

Mr. Milliken: Well, I think I can shorten this witness' testimony and that he will not go through all of these things only generally to show the contribution of the corporation. I figure that it will probably take another half day, at that. I have only one more witness that will take probably not more than an hour or two hours.

Mr. Crouter: I estimate about two hours for Respondent's witness on direct.

The Court: I judge from that then that it will take at least all day tomorrow.

Mr. Milliken: I think that would be a fair guess, if Mr. Crouter will take two hours with his case.

The Court: Is there any reason why we could not start at 9:30 tomorrow morning?

Mr. Milliken: It would be all right with me, your Honor.

Mr. Crouter: Agreeable to me.

The Court: We will start at 9:30 tomorrow morning. We will be recessed at this time until 9:30.

(Whereupon, at 5:15 p.m., an adjournment was taken until 9:30 o'clock a.m., Friday, December 12, 1947.) [206]

(Testimony of Walter S. Harmon.)

December 12, 1947

The Court: Proceed.

Whereupon,

WALTER S. HARMON

called as a witness for and on behalf of the Petitioner, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (continued)

By Mr. Milliken:

Q. Mr. Harmon, I believe at the recess yesterday you were endeavoring to inform the Court of the matters in which the corporation was engaged during the years 1942 and '43, particularly with war contracts, either prime or subcontracts.

A. I believe I covered variable condensers, kite, the A-58 phantom antenna, A-62 phantom antenna, and the LM frequency meters.

We had an item which was known as the noise peak limiter adapter. If we want to speak of inventions or original design, that definitely was, including constructing a complete unit which was conceived by us in its entirety. The purpose of the equipment was to limit noise peaks on communication receivers. The theory behind it was by certain circuit configurations we could make the receiver respond to wave forms of pure sine wave, which normal communications signals are. Noises are random wave forms; by that I mean [209] they are not a pure sine wave. I don't know whether anybody knows what a pure sine wave is or not, but,

(Testimony of Walter S. Harmon.)

anyway, that is a wave of uniform shape, whereas noise peaks are a random form. To put it plainly, the idea was that you could not take a square block and put it through a round hole.

Now, that is essentially what the noise peak limiter was. As I say, it was originated by Hoffman Radio Corporation and submitted to the Navy Department and subsequently ended up in a small production contract, I believe the figure was 2280 units.

We also produced along that same line an electronic relay. Again the purpose of the relay was to limit noise. That was adaptable only to communication receivers, not receivers using voice frequencies, but rather code frequencies or code signals, I should say. That was developed by us and offered to the Navy Department as a new development. It was very effective. Tests at the Naval Research Laboratory indicated that noise reduction was in the order of 120 decibels. 120 decibels means that that was a million to one ratio. In other words, to give the same amount of sound from the receiver the noise had to be a million times stronger than the desired signal, which for all practical purposes means there was no noise, in that your ear could not differentiate between a million to one ratio in sound. There was a great deal of pure development work went into that [210] device. It did fill a need. The Navy Department first issued a development contract to produce 10 of these units. I don't recall just where they were sent. I know of one unit that was sent into the Alaskan area, where they were

(Testimony of Walter S. Harmon.)

troubled with very heavy static, another went into Honolulu, which was another noisy area, I believe one went into Florida; the rest of the 10 I am not sure where they went, but anyway they were shipped into areas where noise was a factor, and the field tests showed that the instrument was very effective. I think later that ended up in a production order for a redesigned unit. However, it does not come into the period with which we are concerned.

On this noise peak limiter we also developed, as I recall, three different types. One was made as an accessory for the Navy—I believe it was the RAS receiver. Another one was made for the SX-28 receiver. Still another one was made for the ARB. The purpose of all of them was the same, just a matter of adapting them to receivers.

Now, that was an accessory that could be sent out into the field where they had noise and they had a certain type of receiver. This adapter could be plugged into the receiver, and it was very effective in reducing noise, which means that communication was made possible in some cases where it would not have been otherwise.

Another contract which was—a great deal of engineering went into it—was the electronic firing error indicator. That was a program that was coordinated through the Office of Scientific Research and Development with California Institute of Technology. In that case we were developing equipment which was—came from a theory that had been evolved by some of the California Institute of

(Testimony of Walter S. Harmon.)

Technology group. The purpose of it was for training aircraft gunners. In normal aircraft training they had used—the bullets in the machine guns or anti-aircraft guns would be coated with different colored paint and they would fire at the target, and after the target was dropped they could register the amount of hits which the gunner had made.

However, the purpose of this was to develop a means of giving immediate information to the gunner and the officer in charge of training, to know whether the gunner was leading the target, whether he was hitting it or lagging it, or whichever the case was. It was a very involved piece of equipment, involving the development of a small transmitter which could be carried in a sleeve target or a flag target, whichever the case was. The theory of it was that the transmitter was of the frequency modulated type, had a microphone in each end which would correspond to the front and the rear end of the target. The microphones were calibrated to indicate the distance that the projectile was from the microphone. That extended over a long period of time. It involved [212] considerable tests at Camp Irwin out here in the desert. It was hard to co-ordinate the development of it, because there was so much time involved in arranging for planes to carry the target. It also had to be co-ordinated with the regular training program at Camp Irwin. The ammunition had to be provided from Washington, the planes from Riverside, and, of course, tests out at Camp Irwin, which meant there were three groups that had to be co-ordinated

(Testimony of Walter S. Harmon.)

and it usually took about 30 days to arrange for a test. A test might last an hour, and then you would wait another 30 days in order to retest again. That did end up in a production contract from OSRD, as I recall, in the neighborhood of a thousand of the small transmitters, and I believe five or six of the main receiving stations. I could be slightly in error in those figures. However, I think they are close.

We also handled the complete development of an antenna coupler for the Navy Department. The design was made by us from a mere specification drawn up by the Navy Department; by specification I mean they required a piece of equipment to do a certain job. They did not furnish drawings of the equipment, did not furnish circuit diagrams. In other words, the specification merely indicated the type of equipment that they wanted and the physical area available for the equipment to go into, so it was a complete design. That was for a quantity of 300 units. Now, the engineering is just [213] as difficult to produce 300 units as to produce 3,000,000 units. However, it was a service that someone had to perform, and we did it.

Another unit of somewhat the same category—or I might explain the purpose of the antenna coupler. It was for use at ground receiving stations where many receivers were used, and in order to eliminate the necessity of putting up an antenna for each receiver. This could work from one antenna and coupled, as I recall, five or six receivers to one antenna, and the receivers could operate independent of one another. And there was no interaction occurred.

(Testimony of Walter S. Harmon.)

Now, another unit of somewhat the same category was the audio coupling unit. There were only 50 produced. However, the development was a design, was handled from a specification which merely indicated the need for a certain piece of equipment. That unit allowed the one monitoring officer to follow, again I think it was either five or six receivers. In other words, it had trigger tubes in it which would light up indicating a channel was in operation, and he could then tend that one channel.

I think I have covered most of the equipment.

Q. And the recitals that you have made, both on this morning and yesterday, relate to work, engineering work performed by the Hoffman Radio Corporation during the years 1942 and 1943? [214]

A. That is correct.

Q. Did you have engineering work initiated in, we will say, the year 1943 that related to actual production at a period subsequent to 1943?

A. Oh, yes, we must have had the LM frequency meter. A great deal of the government production was handled—I mean we produced that equipment all during the war, even some after V-J Day.

Q. If I understood your testimony correctly yesterday, in many instances it might be necessary to engage in a great deal of pre-engineering work, and the actual exploitation for manufacture of the finished product might occur at a subsequent time.

A. That is correct.

(Testimony of Walter S. Harmon.)

Q. Would that be true with respect to the year 1943, of articles manufactured, we will say, and delivered in the year 1944? A. Yes.

Q. What condition did you find the work shop, tools and inventory and so forth of the Mission Bell when you started to work there in January of 1942?

A. Well, the organization, as has been pointed out in previous testimony, was pretty much dormant. The inventory to a great extent was obsolete inventory, by that I mean the parts had little value as far as any new equipment. There was [215] very little equipment to work with. As I recall, we had one signal generator which was the major piece of test equipment. There were—oh, probably a volt meter, a few hand tools, but there really wasn't very much to start with.

Q. How many employees were there when you began work in 1942?

A. Well, as I recall, it was four, I think was the number.

Q. What was the type of work that they performed? Were they engineers?

A. The girl—no, no, there were no engineers there when I went there.

Q. Then did your engineering staff grow during the years 1942 and 1943? A. Yes.

Q. Will you just briefly detail the progress of the growth of the engineering staff? As I understand it then, all engineering work was under your direction.

A. That is correct, also the inspection division was under my jurisdiction. Well, as I recall, we

(Testimony of Walter S. Harmon.)

started on this same civilian receiver development in order to get immediate business, also acquired the inventory of Mitchell-Hughes Company, which gave us a start. Then I engaged one engineer to assist in that, and later as we got into these various military contracts we kept building the personnel up, [216] I mean engineering personnel, such as draftsmen and junior engineers. I can't quote figures, I don't know. I would say at the end of 1943 we probably had 20 people in engineering, and that, as I say, is just an estimate.

Q. I show you part of the stipulation in this case, Mr. Harmon, and I refer to Exhibit 20 attached to the stipulation and this schedule reflected by Exhibit 20 set forth all employees with their classification, employed by the Hoffman Radio Corporation during the year 1943, other than those employees who worked upon an hourly rate. I will ask you to please examine that exhibit and tell the Court the number of engineers reflected thereon and generally what were their duties.

The Court: So far as the number is concerned, it designates which ones are engineers there, doesn't it?

Mr. Milliken: Yes, it does, your Honor.

The Court: Unless there should be some who might be engineers and not so designated.

Mr. Milliken: Well, I think it might be a matter of computation.

Q. (By Mr. Milliken): Mr. Harmon, go through this, the exhibit speaks for itself, but

(Testimony of Walter S. Harmon.)

would you please look at all persons who are designated as engineers and tell us generally what work they performed? [217]

A. Do you want me to define the classification? Is that what you mean?

Q. Yes, and the work they performed.

A. I find the figures incidentally are slightly in excess of the 20 that I estimated. Well, we have the classification——

Q. You will note, Mr. Harmon, in order that you might not be on a wrong tangent there, we have starred that exhibit and there are some who were there only a portion of the year.

A. Oh, I see.

Q. In other words, an engineer might have been there six months and left and another engineer took his place.

A. I see. Well, we have the classification of junior engineer—perhaps I should have started at the top. We have section engineer. A section engineer may have been assigned a complete project, in other words, we will take the antenna coupler as an example. We will assign that to him. He was responsible for the following of that thing through the design stages and putting it into shape for production. I mean, not only the equipment, but also in the following drawings, bills of material, and so forth. He would have—depending on the project, he would have a senior engineer probably reporting to him. The senior engineer was usually, if we could get them, an engineer that had previous designing

(Testimony of Walter S. Harmon.)

experience, perhaps not on handling [218] a complete project, but some phase of it. He may have been a mechanical engineer. He may have handled only the chassis designs or so forth. A junior engineer was usually someone who had had engineering training, but he was more just somebody to do the labor work for the other engineers. A draftsman, of course, is self-explanatory, made the drawings under the supervision of any of the engineers of the project.

The Court: You just asked him about engineers, didn't you?

Mr. Milliken: Yes, Your Honor.

The Court: Yes, that is what I thought.

Q. (By Mr. Milliken): Did you supervise the work of all persons who were designated as engineers on the exhibit which you have before you?

A. Yes.

Q. And what was the extent of that supervision? I mean by that, did you lay out the work for them and did you direct what they should do?

A. Well, depending on the nature of the project and the capabilities of the men that you had available. I naturally supervised the entire engineering activity and would, particularly on equipment such as the LM frequency meters I contributed a great deal myself to them as to outlining how I thought the equipment should be produced. Of course, in engineering [219] a piece of equipment, you break it down into the various sections of the equipment, and you would have different men on it, and you would assign the project to them, and wherever pos-

(Testimony of Walter S. Harmon.)

sible I would outline how I thought it should be accomplished.

Q. I believe you testified yesterday that you gave your exclusive time and attention during the year 1943 to your employment by Hoffman Radio Corporation, is that correct?

A. That is correct.

Q. Are you able to approximate the number of hours per day you were worked during the year 1943?

A. Well, it seemed to me I worked all the time. My home was within about eight or ten minutes from the factory. I always went back at night, and I doubt if there was any Sunday during that period that I was not at my office, probably not all day on Sunday, but I believe that I averaged 16 hours a day during that period.

Q. During the year '43? A. Yes.

The Court: Mr. Milliken, I will break in at this point for the benefit of one or two other matters.

(Short recess taken.)

The Court: Proceed.

Mr. Milliken: That completes the direct examination, Your Honor. [220]

Cross-Examination

By Mr. Crouter:

Q. Mr. Harmon, will you please tell the court your age at the present time? A. 43.

Q. Now, referring back to some of your testimony yesterday, Mr. Harmon, there is one of the companies I would like to ask you a little more

(Testimony of Walter S. Harmon.)

about. As I recall, about 1928 or perhaps a little after that, you for some period of time were associated in some capacity with this General Motors Corporation you mentioned?

A. General Motors Radio Corporation, yes, sir.

Q. Where was the office and headquarters of that company? A. Dayton, Ohio.

Q. You said that was a ten-million-dollar corporation? A. That is correct.

Q. When was it organized?

A. The Dayfan Electric Company was owned by Charles F. Kettering, who was vice-president in charge of research of the General Motors Corporation, and they decided to—the General Motors Corporation decided to engage in the manufacture of automotive radio receivers, and at that time were unable to obtain an R.C.A. license. As a result they acquired from Mr. Kettering the Dayfan Electric Company and then later a rather large corporate set-up was made in which R.C.A. also participated.

Q. That was before you went with the Zenith Radio Corporation? A. Yes.

Q. Zenith Radio was not affiliated in any sense with the General Motors, was it? A. Oh, no.

Q. Then with the General Motors Radio Corporation that you mentioned, about how long were you there with that company?

A. Well, when I think of that of course I think of Dayfan and General Motors because it was—it was combined. That was from 1928 to early 1932.

Q. And as I recall you testified that you received from \$60 to \$65 a week from that company?

(Testimony of Walter S. Harmon.)

A. I don't think I did. I didn't recall the amount of the salary. I was to find that later.

Q. What did you receive as best you recall?

A. When I originally started with Dayfan Electric Company, I started at \$35 a week, to the best of my knowledge that went up to \$55 a week.

Q. Yes, I believe the figure I mentioned is what you stated with respect to Zenith?

A. Zenith, I think that is right.

Q. Well, just exactly what was your position or what [222] were your duties when you were with this General Motors Radio Corporation? You were a way down the line, were you not, in the organization?

A. I think I explained that I held various positions. That is, in small groups. It was a rather finely integrated organization. I had a group one time that was known as the radio frequency group. In other words, we handled the development and design of anything relating to the radio frequency portion of the receiver. Later I headed the advance development group, which could be classified somewhat as research. In other words, we would take a project up to a certain point, and then turn it over to a design group. Later I headed up the entire household receiver section, in which case I reported to the director of engineering. I was directly responsible for design and engineering of all household receivers.

Q. Were you ever concerned with any of the corporations you have mentioned prior to the Mission Bell Corporation, with the mere production

(Testimony of Walter S. Harmon.)

angle of the business as distinguished from research and development on new designs, for instance?

A. Well, I think any engineer is concerned with production.

Q. I mean primarily. What I mean, were you ever in a production department which merely had as its chief objective the job of getting materials and stepping up and putting out production, so you were engaged chiefly on that rather than [223] what might be termed scientific development?

A. Well, with companies such as Distanttone Radio, that I mentioned back in the 1927 period, that was a rather small company and naturally there is not engineering work to keep a man busy all the time. So a receiver was designed and from then on I would follow production.

Q. Then you were not engaged during all of that period exclusively on scientific research and development of radio receivers and related instruments, were you? A. No, I wouldn't say so.

Q. Were there any other companies where you did get over into the production part of the business and we will say 50 per cent or more of your time was really occupied with manufacturing and producing and getting sales volume? A. No.

Q. Now, after the time that you went with Mitchell-Hughes, had the \$75 a week which I believe you testified you received from Emerson Radio Corporation been your top weekly compensation? Is that correct from your testimony?

A. Will you state that again?

(Testimony of Walter S. Harmon.)

Q. I mean the highest figure you received for services?

A. I don't recall how high my fixed figures ran at Mission Bell Company.

Q. Well, this is all before you went to Mission Bell, was it not. This is up to 1936? [224]

A. No, Mitchell-Hughes followed Mission Bell. I was with Mission Bell. I am not sure that I covered that in my testimony yesterday.

Mr. Milliken: Yes, you did.

Q. (By Mr. Crouter): Well, let's hear it again.

The Witness: I was with Mission Bell and then with Mitchell-Hughes, then Mr. Hoffman, Mr. Davidge and Mr. Douglas purchased the Mission Bell Company and I went back into the Mission Bell picture.

Q. (By Mr. Crouter): Yes, but Mr. Harmon, I am talking about the period entirely prior to that, before you first went to Mission Bell. As I understand your testimony yesterday, you were with Mission Bell first about 1936 or early in 1937?

A. That is correct.

Q. Prior to that time, what was the most compensation you had received for week or month or year, out of your engineering services with any one company?

A. I think at Emerson was the tops.

Q. \$75 a week? A. Right.

Q. Was that on a straight salary basis or was some of that a bonus or commission?

A. Well, I am sure it would be considered a straight [225] salary. I mean there were such things

(Testimony of Walter S. Harmon.)

as a Christmas bonus allowed and so forth, but that was rather small.

Q. Something relatively minor at Christmas?

A. That is correct.

Q. A \$100 bonus or something of that sort?

A. Yes.

Q. Would that also be true with respect to all of the companies that you worked for prior to working for Emerson? A. Yes, sir.

Q. Those are mostly straight salaries?

A. Yes, sir.

Q. No commission or bonus in any of those?

A. I don't recall any, no sir.

Q. Now, let's take from 1936 down. When you first went with Mission Bell about 1936 or early in 1937, what was the financial arrangement with respect to your compensation?

A. Well, \$50 a week and 10 cents on each receiver producer.

Q. And you were with the Mission Bell Radio Manufacturing Company for a period of about three years, that is between 1937 and 1939?

A. I believe it was closer to four.

Q. What are the definite dates there, if you recall them?

A. As I recall I went with Mission Bell in July of 1936 [226] and I am not sure of the exact date when I left in 1940, but I believe it was June.

Q. And during that period what was your position with the Mission Bell Manufacturing Company?

(Testimony of Walter S. Harmon.)

A. I was responsible for all engineering and design.

Q. And was that company chiefly engaged during that period as the assembly of what may be termed home receiving sets?

A. Home, and also auto radios.

Q. And auto radios? A. Yes.

Q. Did you have table models as well as the larger console models?

A. Table models, and consoles, yes, sir. I may point out then that our major business was contract manufacturing for Sears Roebuck, Hobbs Battery, I think we did some for Firestone and a little for Goodyear.

Q. Was there any appreciable change in your compensation during that period?

A. Well, it was varying up and down. I mean I would get the 10 cents per receiver.

Q. I mean, did the same scale continue through that period? A. Yes.

Q. \$50 per week and 10 cents per set? [227]

A. That is right.

Q. And the business really declined, did it not, so that your 10 cents per receiver was less in 1940.

A. Well, that is why I left in 1940, yes.

Q. How many senior and junior engineers did you have under your direction during that period when you were with Mission Bell?

A. Well, normally we carried one assistant.

Q. One assistant, and during the period from 1937 to 1940, about how many were the total employees of Mission Bell, the average number?

(Testimony of Walter S. Harmon.)

A. I think it varied up and down. I believe it would average, oh, I would say, probably 35.

Q. Who was the most active or senior officer of the corporation during that period, which of course was before Mr. Hoffman got into it?

A. There was always a little argument about that. Mr. Fleming was presumably president and Mr. Schmieter was vice-president, but that was the trouble. I think they both held equal shares of stock in the corporation or the company.

Q. Then, as I recall your testimony, you went with Mitchell-Hughes Company. Would that be about June, 1940, you went immediately from Mission Bell over to Mitchell-Hughes?

A. I didn't go immediately. I think there was a month or two lapse there. [228]

Q. During the summer of 1940 then?

A. Yes.

Q. Then did you state the exact amount of basic compensation there, or did you have any from Mitchell-Hughes?

A. I believe I stated in testimony that I went there during the early stages on a consulting basis, and then later that was changed to \$100 a week.

Q. How long did the \$100 a week continue, Mr. Harmon?

A. Well, I think it was all the period I was there.

Q. Do you remember about when Mr. Hirsch died?

A. Well, it would have been some time early, in 1941.

(Testimony of Walter S. Harmon.)

Q. How long did you continue in a consulting capacity, or in active duty with the Mitchell-Hughes Company?

A. I was on active duty there until, as I recall, December of 1941.

Q. Then that was practically up to the period when you became associated with the Mission Bell Radio Manufacturing Company?

A. That is correct.

Q. Did you have any bonus or commission—I will withdraw that. You have testified to the 50 per cent arrangement of the net profits, as I recall your testimony, there was some difference of opinion, and you never really received the 50 per cent.

A. Nothing was ever realized from that, no, sir.

Q. Then the \$100 a week is all you actually received?

A. That is correct.

Q. Did you decide to leave the Mitchell-Hughes Company before Mr. Hirsch died?

A. Oh, no.

Q. His death really caused the——

A. Well, I operated the company for the estate for several months after Mr. Hirsch's death.

Q. Was your disagreement regarding the 50 per cent with Mr. Hirsch or with the executors or the people handling the estate?

A. Oh, no, it was involved after Mr. Hirsch died because I felt in my own mind it was going to be a matter of liquidation eventually.

Q. I believe you were instrumental to some extent in acquainting Mr. Hoffman with the situation which existed in the Mitchell-Hughes Company at that time and apprised him of the facts so that as

(Testimony of Walter S. Harmon.)

testified yesterday it later developed that the entire plant inventory and so forth of Mitchell-Hughes then was acquired by Mission Bell?

A. Yes, I mentioned it to Mr. Hoffman.

Q. Can you give us any more detail as to the amount of the consideration for the purchase of Mitchell-Hughes Company assets and equipment?

A. I have no way of knowing that figure, sir. [230]

Q. You had nothing to do with it officially?

A. No. You see, I had already left Mitchell-Hughes.

Q. When did you first become acquainted with Messrs. Davidge and Douglas who were of course in the Mission Bell and the Hoffman Corporation?

A. Well, I had met them while I was still at Mitchell-Hughes. As I recall, Mr. Davidge and Mr. Douglas visited our display room one day. I don't remember the exact time.

Q. Visited at Mitchell-Hughes?

A. Yes, sir.

Q. Mr. Harmon, I would like to ask you about two or three little exhibits here, just to clarify a matter or two, while we have a copy of the stipulation here. Just turn to that if you will and look at Exhibit 15. Mr. Harmon, in your Exhibit 15 you observe this is a letter of March 10, 1942. This is from the Mission Bell Radio Manufacturing Company through Mr. H. L. Hoffman, as president, to you, and please tell us whether that is the first agreement of any kind you had with that Corpora-

(Testimony of Walter S. Harmon.)

tion regarding your employment by the Corporation and the terms of the employment.

A. As I recall this, it was a verbal agreement.

Q. Now, please examine the second paragraph and the reference there to the one per cent on gross volume of business done by the company after excise tax and other applicable taxes are deducted. At that time in March, 1942, the Mission [231] Bell Radio was still engaged in the production of radio sets and so forth for domestic purposes, was it not?

A. Yes, sir.

Q. At that time did you have any knowledge whatever of any eminent governmental restrictions of the production of radios for civilians?

A. Well, I don't recall—I certainly did not at the time the agreement was made.

Q. The war insofar as the United States of America was concerned of course had broken out, but even at that time people in the business I suppose were contemplating going ahead insofar as they could, was that the situation? A. Yes, sir.

Q. And you still contemplated continuation of the production and selling of radio receiving sets, chiefly in the domestic market?

A. Yes, and there was also some consideration being given to military equipment.

The Court: Your question, Mr. Crouter, by the words "at that time," which did you mean, March 10, the date of the letter or the time when the oral agreement was made?

Mr. Crouter: I meant the date of March 10, 1942.

(Testimony of Walter S. Harmon.)

Q. (By Mr. Crouter): Did you so understand the question? If not, tell us what your understanding was on that date. [232]

A. Yes, I—I think I stated that I don't recall what I might have been thinking in March. I do know at the time the verbal agreement was made that was just a compromise. I thought we were going to build radios.

Q. Well, the reference there to excise tax referred to the federal excise tax upon certain parts of a radio, did it not? A. Yes, sir.

Q. And that is what is referred to there?

A. Yes.

Q. Now please turn forward in your exhibits to Exhibit 13. You see that also is in evidence, and that is a copy of the minutes. It is dated May 14, 1942. Now between these two dates you learned, did you not, that effective about April 22, 1942, there was a governmental restriction placed upon the manufacture and sale of radios on the domestic market, or particularly I will limit that to manufacture, I believe.

A. I would presume so, yes.

Q. Well, can you tell the court now whether from your own knowledge, that is about the date, April 22? A. Oh, yes, April, yes.

Q. These minutes here shown by Exhibit 13, dated May 14, 1942, you will notice by the first paragraph after the meeting is called to order referred to the fact that a three hundred thousand dollar order was entered into with the Bendix [233] Avia-

(Testimony of Walter S. Harmon.)

tion, and that also refers to certain requirements of the Signal Corps. I suppose that related to the same order, did it not? Was that a Signal Corps order that Bendix was handling?

A. It was probably, I think it was the aircraft division, and I think it was probably for the Signal Corps, the U. S. Signal Corps.

Q. You observe in the paragraph below that your letter of March 10 with respect to employment is incorporated as approved in the minutes here of the Board of Directors? A. Yes, sir.

Q. So at that time you and the corporation officers really knew that there was some military business in prospect, didn't you?

A. In May of 1942, yes.

Q. Yes. Now, can you tell us how far back you and we will say Mr. Hoffman started taking any affirmative action to secure any military orders as sub-contracts, or anything of that character? In other words, when did that first start?

A. Well, may I refer back to the date of the contract here on this other?

Q. Surely. I believe that is shown here by exhibits there.

A. This would indicate it would be back around February. [234]

Q. I don't know whether these will help you, but here are Exhibits 3 and 4 which summarize some of the contracts. Please examine those documents or anything else that you have, if you have anything to refresh your recollection as to the definite date, and tell us what the date is.

(Testimony of Walter S. Harmon.)

A. As I say, the contract was dated February 10th, which would indicate the action was taken the very early part of February. That is on the variable condenser.

Q. How large a contract was that? Just tell us briefly what kind of a contract that was and how large.

A. Well, the dollar value was \$36,455.56.

Q. With what company, Bendix?

A. Bendix.

Q. Then I suppose it was contemplated even as of March 10, 1942, the Mission Bell Radio Manufacturing Company would possibly be in position to secure additional sub-contracts on various government orders, is that right?

A. Well, at least we had one order, yes. We were probably hoping.

Q. As I recall your testimony generally, you have testified about various things which were worked upon by you and other engineers in the taxpayer corporation, and certain developments and such matters in connection with all of those matters. Did you yourself go to any other laboratory or any other place in connection with your duties and confer with [235] other government officials or other engineers for other corporations?

A. I did no work for any other corporation, if that is what you mean.

Q. Well, I didn't mean work. Were you ever visiting and conferring with other engineers in the radio development business?

(Testimony of Walter S. Harmon.)

A. Yes, sir, I visited the Aircraft Radio Laboratory at Wright Field, Dayton, Ohio, many times, the U. S. Signal Corps Laboratories at Fort Monmouth, New Jersey, the Naval Research Laboratory at—well, right outside of Washington.

Q. And I suppose you went out to the California Institute of Technology, commonly known as Cal-Tech, in Pasadena, California?

A. Yes, sir.

Q. Made many trips up there, I suppose?

A. Yes, sir.

Q. And you, because of your position in the taxpayer corporation and on sub-contracts, also had what might be termed the entree to a good many things along that line, which the ordinary person did not have? Is that right? I mean with respect to radio development, particularly along the lines on which you were working, is that right?

A. Yes, I would say so.

Q. Did you ever go to other places, such as the U. S. [236] Bureau of Standards in Washington, D. C.?

A. No, sir. I have never been to the U. S. Bureau of Standards.

Q. Any offices in Washington, D. C., with respect to radio research and development?

A. Yes, the U. S. Navy Department Bureau of Ships, probably the Ordnance Department.

Q. Any other place you think of?

A. Well, the Pentagon Building.

Q. That was the War Department there across the river?

A. That is right.

(Testimony of Walter S. Harmon.)

Q. I notice among your contracts and memorandum contracts a good many references to Signal Corps orders. Was that chiefly for the Army, particularly in 1943?

A. Yes, Signal Corps, yes, that would be the Army.

Q. And did you do any work as a prime contractor for the Navy Department, for instance?

A. In the latter part of 1943 that LM frequency meter was a Navy order.

Q. Were there other engineers, perhaps some of your senior and junior engineers in your taxpayer corporation who also spent some time at least in some of these other research laboratories during 1942 and 1943?

A. Yes.

Q. And about how many of them at different times? Just [237] give us a general idea on that.

A. Well, on the Navy Department frequency meter order, on one occasion I took two engineers with me east.

Q. About how much time did they spend there?

A. As I recall, we were east about a week.

Q. And you had two or three engineers stationed at Cal-Tech for some time, too, did you not?

A. They were not stationed at Cal-Tech, no, but they were coordinating between the two.

Q. That is what I mean, doing development work there?

A. Oh, yes.

Q. How much time did they spend there separate and apart from your own plant?

A. Well, I don't think they spent very much time at Cal-Tech's laboratories. Quite a lot of time

(Testimony of Walter S. Harmon.)

was spent in field tests, at which in many instances Cal-Tech men went along as observers.

Q. Did any of your engineers ever go?

The Court: That is mighty indefinite. I am going to wonder how much time that means when I come to read that. It is pretty indefinite. Can you find out more definitely?

Q. (By Mr. Crouter): Can you make it more specific, tell us how many men or how many days of their time or something tangible?

A. At California Institute of Technology? [238]

Q. Yes.

A. Oh, as an estimate I would say three men, fifteen days.

Q. During the two years? A. Yes.

Q. Did they spend that much time at any other laboratory, any one engineer? A. No.

The Court: That is fifteen days each?

The Witness: Yes, sir.

Q. (By Mr. Crouter): Now, in connection with the development work that you testified to that was at your corporation's plant in 1942 and 1943 with respect to all those various matters, it is true, is it not, Mr. Harmon, that you and other engineers in the taxpayer corporation's plant relied upon and conferred and agreed with other radio engineers in the government service and in the other private employment with respect to their matters in which you had sub-contracts and on which you were working, is that true? A. Oh, I don't think so.

(Testimony of Walter S. Harmon.)

Q. Would you say that that did not happen as to any of those matters that you have testified to that you developed, previously?

A. Normally our contract with other engineers was because [239] we were trying to interpret their requirements. We were responsible for the design.

Q. Well, take the antenna kites, for instances, that was done through Bendix, was it not?

A. Yes.

Q. Did Bendix sub-contract some of these orders to other manufacturers for that kite?

A. I think at a later date, I think as I recall, the James Head Company manufactured kites, but I don't think they manufactured them for Bendix. Another source of supply was set up in the east for the so-called Gibson Girl transmitter, manufactured by Kingston. It was felt that another source should be set up.

Q. What was the purpose of having engineers in the employ of your company confer with scientists of the California Institute of Technology and some of these other places?

A. Well, as I recall, they were handling the pure research for us on this project.

Q. What project?

A. On the Fire Error Indicator.

Q. Is that the only thing that was the subject of conferences and communications with other laboratories? Is that your testimony?

A. Not the Fire Error Indicator would not involve the other laboratories, no. [240]

(Testimony of Walter S. Harmon.)

Q. That was not new with your company, by the way, was it? Isn't that a matter that the military had been working on for a long time?

A. The fire error indicator?

Q. Yes.

A. It had been worked on for quite a long time.

Q. To what extent had it been developed before you got into it at all, as you testified here?

A. Our contract was to take this piece of equipment and place it into production. This is an equipment which was merely prototype equipment that had been produced up to now.

Q. And it had been completed before that and some models produced? A. Sure.

Q. And you were merely given an order for reproduction of a thing of that sort?

A. No, we were not to produce it in the form that they had produced it. We had to produce a piece of gear that would give consistent performance after being released, after targets had been released on this terrific acceleration involved, and the prototype equipment was merely what you might call laboratory models, experimental models.

Q. Was your company the only one that produced those fire indicators? [241]

A. As I recall, it was, yes, sir.

Q. Well, a great many of those things that you have testified about, Mr. Harmon, were really regarded somewhat as smaller shop orders, were they not, and handled in that manner, because they were subcontracted or bid from prime contractors?

(Testimony of Walter S. Harmon.)

A. If you mean the design was complete when we received it, no, there wasn't any in that condition.

Q. Isn't it true that for several of those you were given specifications and so on to tell you exactly what was wanted?

A. Not exactly. The specifications you received were as to the performance desired.

Q. Do you have any of your bids or any of the contracts here now that you had with Bendix or Kingston? A. That I don't know, sir.

Q. You didn't bring them to court, did you? Have you brought any of those around as samples here? A. I didn't personally.

Q. Did you have to bid on most of those sub-contracts with the Bendix and with Kingston in 1942 and 1943? A. Yes, sir.

Q. Was there bidding by some of your competitors and other people who wanted to get that business? A. Yes, sir. [242]

Q. And you had to know then in advance generally what they wanted and about what it would cost to produce it, did you not?

A. That is right, sir. Usually the bids were accompanied with a proposal showing how we planned on doing it.

Q. And then you would have to make decision when you were trying to get business about what was wanted and what you could produce, isn't that true? A. Yes.

(Testimony of Walter S. Harmon.)

Q. Now, with respect to the two years 1942 and 1943, most of your development was done in which year? A. Probably 1943.

Q. The things that you have testified to now were mostly in 1943?

A. Well, of course, we developed the variable condenser and the kite in 1942.

Q. How many of these other things?

A. As I recall, the A-62 phantom antenna was developed in 1942 and the A-58 phantom antenna.

Q. Would it be correct to say that most of the things you have talked about here were developed in 1942?

A. Not as far as the dollar volume and the engineering, amount of engineering effort. Probably there was more engineering effort expended in 1943 than in 1942.

Q. What were the things which produced the greatest [243] dollar volume of all your contracts?

A. The LM frequency meter.

Q. When was that developed?

A. It was in 1943.

Q. Now, I take it your testimony with respect to the 16 hours a day referred to both years?

A. Yes.

Q. That was——

A. I refer to the war years.

Q. And that was six days a week, and sometimes part time on Sunday? A. Yes, sir.

Q. You heard Mr. Hoffman's testimony yesterday about working several nights in a row as well as days, didn't you? A. I did.

(Testimony of Walter S. Harmon.)

Q. Were you in that group?

A. I was in that group, yes sir. I did not work that many nights.

Q. Can you tell me what year that was in?

A. It was in 1942.

Q. And what portion of 1942?

A. Must have been February.

Q. That was early in the game, when you were first getting subcontracts? A. Yes, sir. [244]

Q. Mr. Harmon, I want to ask you about the year 1942 and your compensation in that year. You say the agreement and the minutes that we have talked about here showed the basis for it. Now, please tell us the total amount of your compensation **from all sources in 1942**, and in that connection I show you what appears to be your 1942 income tax return.

A. This would be indicated as \$6,680.32.

Q. Is that the total amount of gross income?

A. Oh, no. Wait a minute. No, I am sorry. Up here. This is \$7,244.18.

Q. Now, let's look at the schedule. I want to know whether this is all from Mission Bell. Well, the source is not indicated. Would you say that is all from Mission Bell or partly from some other source?

A. 1942, it would be all from Mission Bell.

Q. And you were giving exclusive time to that company, so I take it then you had no income from any other source? A. That is correct.

(Testimony of Walter S. Harmon.)

Q. And that is from what date in 1942? Did you work there at all prior to March 10th, the date of your agreement?

A. As I recall, I started in January.

Q. When you first went there in January, what agreement, if any, did you have as to your compensation?

A. Exactly the same as was later written in this. I don't recall the date of it. [245]

Q. The agreement of March 10, 1942?

A. Yes, sir.

Q. \$75.00 per week plus 1 per cent on gross volume. A. Yes, sir.

Q. I see. Did either Mr. Davidge or Mr. Douglas do any work in connection with the operation of the corporation in 1942 or 1943?

A. I believe Mr. Douglas was with us for a short period of time.

Q. In what capacity?

A. I really don't know.

Q. Did you see him around there doing any work in any particular department?

A. I remember seeing him count rivets.

Q. Do you know whether he had any compensation arrangement with the corporation for what he did? A. No, sir, I do not.

Q. In general, then, do I understand that they did not assist you or do anything at all in connection with engineering development or production, is that right?

A. Speaking now of Mr. Davidge and Mr. Douglas?

(Testimony of Walter S. Harmon.)

Q. Yes.

A. I don't think they did, no.

Q. Did any of your engineers ever go to the R.C.A. headquarters at New York in connection with any of this [246] engineering development?

A. No, sir.

Q. How many of these various seven or more particular things that you have testified to that you developed and worked upon there, such as the variable condenser and kite and so forth, do you yourself claim credit for, or do you claim credit for all of them?

A. I don't claim full credit for any engineering project. I directed the effort.

Q. Did you yourself develop the main idea which your company carried and and perfected which went into the manufacture of any of those things?

A. Not necessarily, no, sir.

Q. It was mostly done, then, insofar as your corporation was concerned, by junior engineers in your organization but over whom you had supervisory control and direction?

A. Yes, sir.

Q. That is the picture.

Referring to testimony about certain tests that were made, I believe, at Camp Irwin, where was Camp Irwin located?

A. Just a little beyond Barstow.

Q. Out in the desert area east of Los Angeles.

A. Yes, sir.

Q. What was the O.S.R.D. that you referred to, [247] for the record?

(Testimony of Walter S. Harmon.)

A. That is the Office of Scientific Research and Development.

Q. That was one of the offices that you worked in close collaboration with during the war period?

A. On the fire error indicator, yes, sir.

Q. I suppose the military branches, particularly the Army and Navy, had considerable number of representatives in that organization.

A. No, I don't think they had many representatives in that. As I recall, the O.S.R.D. was a division of the N.D.R.C., National Defense Research Council.

Q. What officers or individuals were most prominent in arranging and conducting these tests you speak of, in the O.S.R.D.?

A. There would usually be one observer from O.S.R.D.

Q. Was that an organization which headed up in Washington, or where? A. Yes.

Q. That is Washington, D. C.?

A. Yes, sir.

Q. They had military observers there certainly, did they not?

A. Very few on the tests that we would conduct.

Q. How many men would your corporation have out on [248] such tests?

A. Oh, sometimes three, possibly four.

Q. Who primarily arranged and coordinated such tests?

A. California Institute of Technology did most of that.

(Testimony of Walter S. Harmon.)

Q. Did they have a number of scientists and radio electricians there, too?

A. I would say their crew would be about equal to ours.

Q. Then it was not solely under your auspices or jurisdiction at all? That is correct, isn't it?

A. The tests, no, sir, that is right.

Mr. Crouter: I believe that is all. Thank you.

Redirect Examination

By Mr. Milliken:

Q. Mr. Harmon, would you please tell the Court what part, if any, Mr. Hoffman played in matters of research or engineering or matters relating to your department?

A. Well, generally all projects were handled by a coordinating group which Mr. Hoffman headed up. In the group would be the members of the engineering department involved in the particular project, also the procurement man. Mr. Hoffman naturally directed our activity. In any of these group discussions of problems involved, a great many people contributed to things that even might be of an engineering nature.

Q. Did Mr. Hoffman discuss with you during 1942 and [249] 1943 the feasibility or the non-feasibility of making bids for particular types of work for the Army or Navy?

Mr. Crouter: If your Honor please, I object on the ground it is leading.

Mr. Milliken: Your Honor, if I may reframe that, you would have a question without an objection.

(Testimony of Walter S. Harmon.)

The Court: The objection is overruled.

The Witness: I would say he did.

Mr. Milliken: That is all.

Mr. Crouter: No questions.

The Court: Let me ask this witness, or I might only direct counsel's attention to it. As much as anything I want to know what it means, and that is in connection with some of this testimony. I notice that this Exhibit 15 dated March 10, indicates that at that time in confirmation of some previous conversation Mr. Harmon is to get \$75.00 a week salary and 1 per cent of the gross volume of the business. Then I notice that later in these minutes of May 14, 1942, because he has now terminated his connection with Peerless Electrical Company, which, incidentally, makes me wonder whether he is correct in his statement that all of his salary in 1942 was from the Petitioner company.

The Witness: That is Mr. Hoffman.

Mr. Milliken: I don't think that is—this witness was never an employee of the Peerless. That is Mr. Hoffman. [250]

The Court: Oh, yes, I was altogether confused. I thought it was the same man. If it had been, there would have been confusion there.

Anything further from this witness?

Mr. Crouter: Just one question.

Recross Examination

By Mr. Crouter:

Q. Would you look at Exhibit 15 again there, Mr. Harmon? I asked you previously about this

(Testimony of Walter S. Harmon.)

and I want you to look again at the first part of the second paragraph. You see the first paragraph says they confirm our conversation and verbal agreement in January, this is to confirm our arrangement at that time, then refers to \$75.00 per week, and then Paragraph 2 "in addition to the above, we will pay you an override of 1 per cent" and then 1 per cent in parenthesis "on the gross volume of business done by the company after excise tax and other applicable taxes are deducted."

A. It should have been all one paragraph.

Q. At that time, though, doesn't that indicate, or does that refresh your recollection as to whether the 1 per cent was really in the picture as of March 10, 1942?

A. Oh, no, no. As I say, that really should have been written as one paragraph there. The 1 per cent was always in from the first. I would say that is wrong there. I think it should have been combined in the first paragraph, instead [251] of making a new paragraph of it.

Q. But this was the first writing between you and the company indicating this? A. Yes, sir.

Mr. Crouter: I see. That is all. Thank you.

The Court: We will be recessed for 10 minutes.

(Short recess taken.)

(Witness excused.)

Whereupon,

WALTER D. DOUGLAS

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Tell us your name, Mr. Witness.

The Witness: Walter D. Douglas.

Direct Examination

By Mr. Milliken:

Q. Where do you reside, Mr. Douglas.

A. At 501 South Hudson Avenue, Los Angeles.

Q. How long have you lived in Los Angeles?

A. Since 1920.

Q. Prior to 1941, or in the year 1941, what business were you engaged in?

A. Well, I was in 1941, the early part I was in Edgin & Company and Standard Utilities. [252]

Q. What business are they engaged in?

A. Edgin & Company was a wholesale retail plant outfit that held the warranted agency for Motorola and Philco automobile radios.

Q. What was the other company?

A. Standard Utilities was a distributor with the Farnsworth Radio, Acorn Stoves, and I think there were one or two other smaller lines.

Q. What was that— a proprietorship on your part, or what were each of those?

A. Standard Utilities was a partnership in which I was a partner. Edgin & Company was a corporation of which I was a stockholder.

Q. Who were the other stockholders?

(Testimony of Walter D. Douglas.)

A. In Edgin & Company Mr. Davidge and myself, I think, held the capital stock, and Mr. Edgin held a preference stock.

Q. Is the Mr. Davidge to which you have referred the Davidge that was associated with you and Mr. Hoffman in this Mission Bell Radio deal?

A. Yes, he is.

Q. Had you been in any other line of business in 1941 or prior thereto?

A. Well, prior to I was in the investment business from 1932 to 1940.

Q. What was the nature of that business? [253]

A. Well, I had went to work for White & Company as statistician in 1932, stayed there until about February of 1933, and went over and assisted in the formation of Nelson Douglas & Company, which was an investment house which was formed at that time, and stayed with them until 1940, when I left and went in with Edgin & Company.

Q. Were you only an employee or did you have an interest in Nelson Douglas & Company?

A. I had an interest. It was a corporation and I was a stockholder.

Q. And what was the business generally of Nelson Douglas & Company, the business in which they engaged?

A. Well, they had a combination investment counsellor and general securities house. It was not a wire house, not a straight brokerage house.

Q. What were your duties with Nelson Douglas & Company?

(Testimony of Walter D. Douglas.)

A. Well, for the first part, the first few years I was in charge of the statistical department, and later moved on as duties connected with the cashiering end. I was treasurer of the company and was to supervise the general bookkeeping and cashing.

Q. At Nelson Douglas & Company were your efforts directed to the revival and restitution of businesses that might have been in financial difficulties, or was their business entirely one of securities? [254]

A. Well, it was entirely one of securities. However, in 1932 a great many securities were in the condition you speak of, and in that respect we were forced to at least explore the condition of companies that were in rather bad shape.

Q. You mean, for example, such as bondholders' protective committees and things of that kind?

A. That is correct.

Q. Incident to businesses that were in financial difficulties.

A. That is correct.

Q. When, for the first time, if you did have any knowledge with respect to the business carried on by the Mission Bell Radio Company, were you familiar with that prior to 1941?

A. Well, familiar to the extent I knew they were in the radio receiver manufacturing business. I had seen a certain number of their sets. I think I had one at one time, and as far as being connected with or knowing any of the personnel or having actually been in their plant, I hadn't.

(Testimony of Walter D. Douglas.)

Q. During the year 1941 was the Mission Bell setup and its difficulties, if it had any, presented to you for consideration?

A. Yes, I think—well, it was presented once rather generally, and at that time nothing was done. There was no [255] particular initiation of any effort. Then late in 1941 the subject came up again and I reviewed it much more thoroughly at that time, and as the result made a connection with Mr. Hoffman.

Q. Are you related to Mr. Hoffman?

A. No, I am not.

Q. Any of your family related to him?

A. No, sir.

Q. Had you known Mr. Hoffman prior to the year 1941? A. No, sir.

Q. Will you please tell the Court the conversation and discussions that ensued between you and Mr. Hoffman when he came to you with a proposition concerning Mission Bell?

A. Well, the same—the core of the discussion was that here was a company which had been in business for some period of years; that at one time they had enjoyed a rather good reputation, done a considerable volume of business, and there were apparent confusion in management and inability to market their product or make the right contacts; they had gone down hill and were in a position where—well, there wasn't much ahead for them as they existed under the present management, but that it was a corporation which had the entity and some of the physical necessities, had various potential assets which might be developed, if taken over and operated in an efficient manner. [256]

(Testimony of Walter D. Douglas.)

Q. Who was present at these discussions which you have just related?

A. Well, I think primarily there were Mr. Hoffman, Mr. Davidge and myself. I think Mr. Edgin sat in on possibly one of them, but he was not too interested in it and dropped out, and I think the bulk of the conversations were the three of us.

Q. Could you designate as nearly as you can the time of those early discussions which you had with Mr. Hoffman, at which you were present and Mr. Davidge was present?

A. Well, as I recall, they were somewhere around—started possibly the latter part of October or November of 1941, to the best of my memory. It was the latter part of the year.

Q. Did you and Mr. Davidge and Mr. Hoffman come to some agreement with respect to your interest in the matter, or did you abandon this matter?

A. No, we finally came to an agreement.

Q. Will you please state to the Court what the agreement was that you and Mr. Davidge had with Mr. Hoffman, all three of you being present, as I understand it?

A. Well, it was a rather involved agreement, because first of all we had only an agreement between the three of us as to how the matter would be handled if Mr. Hoffman could make an arrangement to purchase the Mission Bell Corporation. We agreed on the basis of the stock. When I say we agreed, [257] this, of course, was partially the result of Mr. Walker, who was Mr. Davidge's attor-

(Testimony of Walter D. Douglas.)

ney, as to the final wording and everything of the agreement, but it concerned the disposition of the stock or various stock interests, the amount of money that we would put in, our position in the company if it were formed. That is the general outline of that agreement, all, of course, being subject to Mr. Hoffman's purchasing control or the entire control of Mission Bell.

Q. Well, there are in evidence in this case, Mr. Douglas, agreements that Hoffman executed for the purchase of Schmieter's stock and Warner's stock and of Fleming's stock, and there is also an agreement dated December 9, 1941, which is in evidence, between you, Mr. Hoffman and Mr. Davidge. Had you agreed orally prior to such dates as to the basis upon which you would go into the deal, assuming that Hoffman could purchase the stock?

A. Yes, that is correct. In other words, we came to an oral understanding and I think—yes, our agreements, as I recall, were all drawn up long before they were signed or accepted, and I say long before, days before, and on that basis all the agreements were agreed upon, even though the signing was chronologically different.

Q. I understand that those agreements were drafted by Mr. Walker, who was the attorney for Davidge.

A. That is correct. [258]

Q. What was the agreement with respect to the stock of Mission Bell, assuming that Hoffman could purchase the same?

A. Well, the agreement on the stock was that Mr. Hoffman was to have 50 per cent and Mr. Da-

(Testimony of Walter D. Douglas.)

vidge and myself each 25 per cent. You mean that portion of the agreement?

Q. Yes. In other words, you were to have 25 per cent of the stock, Davidge 25 per cent of the stock and Hoffman 25 per cent of the stock—Hoffman 50 per cent of the stock.

A. Hoffman, 50 per cent, that is correct.

Q. And you recite in your agreement on December 9, 1941, which is in evidence, that Hoffman was to acquire this stock and to hold it in trust for you and Davidge, with your respective interests.

A. That is correct.

Q. Isn't that correct?

A. The stock was purchased on a—I guess it was a monthly payment plan, and there was naturally always the possibility that the purchase would never be completed and the stock would never be issued to Hoffman, Davidge and myself. For that reason it was decided best to have Hoffman, who would make the original contract, hold it as trustee with our various interests set forth.

Q. In the agreement of December 9, 1941, it is also agreed that you and Davidge should be on the board of directors of this corporation after Hoffman had acquired the stock, is [259] that correct?

A. That is correct.

Q. Did you go on the board of directors?

A. Yes, sir.

Q. Did Davidge? A. He did.

Q. Take the years 1942 and 1943, were you and Davidge on the board of directors?

(Testimony of Walter D. Douglas.)

A. Well, in Mr. Davidge's case he was on until early in 1942, when he went into the service, at which time he appointed or nominated Mr. Paul Adams to serve for him during his absence.

Q. Mr. Paul Adams being—

A. An attorney. In my case I left in the summer of 1942 to go into service, and my wife, acting under a power of attorney, represented me on the board of directors during my absence.

Q. And how many were on the board of directors of the corporation during 1942 and 1943?

A. I think three were all.

Q. Mr. Douglas, I would like to ask you a personal question. Looking at yourself in 1941, how much were you worth? What was your net worth?

A. Oh, I would say three-quarters of a million.

Q. And do you know the net worth of Mr. Davidge? [260]

A. No. I would say that he was at least equally comparable to my own position.

Q. Well then, when you went into this deal in 1941 and had your arrangement with Mr. Hoffman, did you have any arrangement with respect to your financing of the company? What was you and what was Davidge to put into the company?

A. Well, originally as I recall the original amount was \$10,000.00, put in two thousand by Mr. Hoffman and four thousand apiece by Davidge and myself. I might say that we realized that if the operation went through that it would probably require more financing later, but that was, as I recall, was the initial amount which we invested.

(Testimony of Walter D. Douglas.)

Q. Did it require financing the latter part of the year 1942 and 1943 by yourself and Mr. Davidge? A. It did.

Q. And did you put in additional sums?

A. I did, sir.

Q. You loaned additional sums, did you, or how did you handle your contribution?

A. It was handled by loans to the company.

Q. Did you discuss with Mr. Hoffman, prior to the execution of these agreements on December 4, 1941, and December 9, 1941, the basis upon which he was to be employed by Mission Bell?

A. Yes, sir, we did. [261]

Q. Please state what discussions you had, and if you reached an agreement, what agreement you reached?

A. We talked about salaries, and the agreement was that at that time the company could not afford to pay an excessive salary to any of the executives; that in that condition we felt that an incentive type of arrangement, which would give Mr. Hoffman the desire and the incentive to create something out of this defunct company, or virtually defunct company, was the best method for all of us. It would give him an opportunity of building something and permitted us to share in whatever growth there was in the future. As the result we arrived at a nominal monthly salary, I cannot tell you exactly how much it was. It was relatively small, and a percentage of the sales.

Q. Do you remember what the percentage of the sales was to be?

(Testimony of Walter D. Douglas.)

A. Yes, sir, it was 3 per cent.

Q. 3 per cent of the sales. You say you were to invest four thousand, Mr. Davidge four thousand. Did you do that presently? I mean, did you do that in December, 1941, or January of 1942?

A. December, I am sure it was December of 1941.

Q. I think the evidence in this case shows that on December 4, 1941, there was a directors' meeting of the Mission Bell, and it shows that you and Mr. Davidge were [262] elected to the board of directors, together with Mr. Hoffman, and those were the three that composed the board of directors.

A. That is correct.

Q. And that was true during the years 1942 and 1943, save for the intervention of a nominee of yourself or the intervention of the nominee of Mr. Davidge?

A. That is correct.

Q. Did Mr. Hoffman discuss with you and Mr. Davidge the employment of Mr. Walter S. Harmon?

A. He did.

Q. Will you please state the discussion that ensued?

A. Well, first of all we had to find an engineer if we were going to do any business. Through checks made on Mr. Harmon he seemed to be a very capable man and one that we could do very well to employ. The question of employment and compensation was a little difficult, because there again we were not in a position to pay an excessively high salary, and we certainly had not too much to

(Testimony of Walter D. Douglas.)

attract a man of Mr. Harmon's capacity, unless there were some similar arrangement such as we had made with Mr. Hoffman, to give him the incentive to come and work and grow with the company, and as the result we agreed on a nominal monthly salary plus a similar percentage of the sales, I think it was 1 per cent of the sales.

Q. Did you and Mr. Davidge discuss this fully with Mr. Hoffman? [263] A. We did.

Q. Did you give Mr. Hoffman directions with respect to the employment of Mr. Harmon?

A. Yes.

Q. You approved, did you? A. Yes, sir.

Q. Or did you not? A. Definitely.

Q. You approved of his employment.

A. Certainly.

Q. Mr. Harmon has testified that he began work there in 1942, January. Does that conform to your recollection?

A. I think that is correct. It was shortly after the first of the year.

Q. 1942? A. '42, yes, sir.

Q. As an investor in this business, did you feel that the compensation arrangements with Hoffman and Harmon would be fair and would not unduly drain your capital investment in the company?

A. I did.

Q. In the agreement of December 9, 1941, which is in evidence, that being the agreement executed between you, Mr. Hoffman and Mr. Davidge, did you provide in any manner whereby you and Davidge

(Testimony of Walter D. Douglas.)

could exercise predominant control [264] with respect to this company, Mission Bell?

A. Well, we had a majority vote of the board of directors. We had, on the basis of stockholders, we had at least a block there, and it was agreed that inasmuch as we had put in the bulk of the money that if at any time during the course of this stock purchase contract that we could withdraw and stop at that point.

Q. And would Hoffman be likewise required to stop at that point, if you and Davidge so desired?

A. As I recall, he would, unless he found other capital to continue. I don't recall whether we was enjoined from continuing it or not. I know we had the right to stop as far as we were concerned and withdraw.

Q. Have you and to your knowledge has Mr. Davidge ever expressed any dissatisfaction with the compensation arrangements which you had with Hoffman and Harmon?

A. Well, I have never had any dissatisfaction, and Mr. Davidge has never spoken to me along that line at all, I mean, never indicated to me that he was dissatisfied with it.

Q. So throughout the year 1943 there was complete and harmonious satisfaction on your part and so far as you know on Davidge's part with respect to the compensation agreements with Hoffman and with Harmon. A. That is correct.

Q. Do you remember who approached you with respect to [265] interesting you, if possible, in the

(Testimony of Walter D. Douglas.)

Mission Bell deal, prior to the time Mr. Hoffman approached you?

A. No. As a matter of fact, I am not even sure, as I recall—we heard about it through Mr. Edgin, who said that somebody he knew in the business had been in, and it is possible that I was not there when they had their discussion, and found out entirely from Edgin, because I don't recall any one individual telling me the story, except hearing it through Davidge and Edgin.

Q. Well, did Mr. Edgin advise you what his reaction was concerning you going into the deal or Mr. Davidge, speaking now before you saw Hoffman?

A. Yes, Mr. Edgin——

Mr. Crouter: If your Honor please, I object to this on the ground it is hearsay, irrelevant and immaterial.

The Court: You are asking him to state—read me the question.

(The question was read.)

The Court: Objection sustained.

Mr. Milliken: My purpose, your Honor, in asking that question, is to show that the Mission Bell had been discussed by other people, turned down and it was not until he saw Hoffman——

The Court: Of course, you are asking this man for some hearsay, are you not? [267]

The Court: Read the question again.

Mr. Milliken: I am asking if he was informed.

(The question was reread.)

(Testimony of Walter D. Douglas.)

The Court: What his reaction was would be a fact, as I see it, although it would come within the hearsay rule. Objection sustained.

Mr. Crouter: That is true even—is Mr. Edgin still alive?

Mr. Milliken: I don't know.

By Mr. Milliken:

Q. Is he alive?

A. No, sir, he is dead.

Q. Did Mr. Edgin advise you of any decision he had reached with respect to becoming interested in the Mission Bell deal, prior to the time you saw Mr. Hoffman?

Mr. Crouter: I object on the same ground, and particularly it is immaterial.

The Court: I don't think it is altogether material—I mean, altogether immaterial. That is not what I am thinking of, but as to whether or not it comes within the hearsay rule. You will have a chance to cross examine. I understand this man is dead, but this does not seem to be self-disserving testimony at all. Perhaps it couldn't be, pretty hard to say whether it was self-serving, but it certainly could not be called self-disserving. This particular question, however, [267] calls for a yes or no answer, and instead of sustaining the objection I think I will let him answer this question yes or no, although it leads nowhere really.

The Witness: May I have the question?

(The question was read.)

(Testimony of Walter D. Douglas.)

By Mr. Milliken:

Q. Just say yes or no. A. Yes.

Q. Will you state what he advised you?

A. He was against it.

Q. Did he state why he was against it?

A. Well, he—Mr. Edgin was a man who did not particularly like to go outside his own sphere of operations. I think that is—that was one reason; the other, he didn't feel that the company had any prospects.

Mr. Milliken: That is all, may it please the Court.

Cross Examination

By Mr. Crouter:

Q. I take it, Mr. Douglas, that Mr. Edgin was not particularly interested at all in any radio matter, is that right?

A. Well, he was very much interested in the sales of radios, because that was his business.

Q. Did he then have any interest, financial interest, in any radio manufacturing or assembling or producing company? [268]

A. No, he did not.

Q. Now, Exhibit 7 in this case, Mr. Douglas, is a copy of the agreement of December 9, 1941, between you and Mr. Davidge and Mr. Hoffman, and it indicates that you loaned to the company apparently—by that I mean the Mission Bell Radio Manufacturing Corporation—the sum of \$4000.00. I take it that you actually did that. A. Yes, sir.

Q. Was that done late in December, 1941?

(Testimony of Walter D. Douglas.)

A. As I recall, it was the middle or the latter part of December.

Q. Was that handled on the basis of a loan, or did you consider that that was an investment whereby if the venture turned out to be successful you would secure your 25 per cent of the stock of the corporation?

A. Well, it was entered into with the idea and hopes that it would be successful and that 25 per cent would accrue to me.

Q. That was more or less, in a practical sense that was the cost of that stock then which was later issued to you about the first of 1944, isn't that right?

A. I don't know whether you would tie that into the cost of the stock, because there were other moneys went in there. It was an investment in this general procurement program, stock procurement program. However, as I say we [269] anticipated further money would be advanced.

Q. Now, referring to your testimony about securing additional money for the corporation, particularly in 1942 and 1943, did you yourself personally loan to the corporation or advance to it for any purpose any sums of money that belonged to you?

A. Yes, sir.

Q. How much in 1942 or 1943?

A. Oh, I can't break it down by years. I would say in the aggregate it ran up to around \$40,000.00.

Q. Over what period?

A. I would say between December of 1941 and the end of 1943.

(Testimony of Walter D. Douglas.)

Q. And how was that actually treated with respect to any documents written at the time?

A. In the initial stages it was considered as a loan to officers.

Q. A loan to officers?

A. Pardon me. I am getting my—it was a loan from officers.

Q. Was there a note given, a promise to pay that back? Did you have such a note from the corporation?

A. There was some documentation. I have forgotten whether it took the actual form of a note or whether it was a letter that indicated the amount of the obligation and who [270] had advanced the money.

Q. You understood, of course, particularly after the corporation secured some subcontracts for government work, that it was undertaking some rather large manufacturing undertakings, didn't you?

A. Yes, sir.

Q. By the way, were you ever an active officer of this corporation? Did you spend any time at the offices of the company itself there?

A. In 1942 there were probably two or three months when I spent, oh, possibly half of my time there. From then on until I came back from service, no, I did not have a full time job there.

Q. During the time that you did spend there in 1942, Mr. Douglas, did you have any arrangement for compensation?

(Testimony of Walter D. Douglas.)

A. There was an arrangement made sometime in the spring of 1942. I can't tell you just when, but there was an arrangement for compensation.

Q. Did you receive compensation for services rendered there? A. Yes, sir.

Q. What amount and at what rate?

A. I think it was around \$300.00 a month, somewhere in that neighborhood.

Q. In just a little more detail, what did you do there [271] in the early part of 1942? Were you chiefly concerned with the financial operation of the company, or production? A. Financial.

Q. Almost entirely. A. Yes, sir.

Q. When you first made your advance of \$4,000.00 into the company in 1941, it was then contemplated that the company would merely proceed in the manufacture and assembly of radio receiving sets, was it not?

A. I would say that is generally—yes, sir.

Q. Isn't it also true that up to the time of December 9, 1941, which was two days after Pearl Harbor, of course, even at that date your entering into this venture was chiefly having in mind the idea of manufacturing and producing some kind of radio sets for the domestic market?

A. Basically, yes, sir.

Q. You had no ideas at that time or even, we will say, about the 1st of January, 1942, that the 1943 business would amount to anything like what it did amount to, isn't that a fact?

A. Well, I don't think that I ever speculated too much on any specific amounts. I had hopes that

(Testimony of Walter D. Douglas.)

the company would increase and produce a volume of business, but to what extent I hadn't tried to estimate.

Q. You had no ideas at that time that you would exceed [272] a million dollars in gross business, did you, in 1943?

A. No, I probably did not.

Q. Mr. Douglas, our stipulation here has an Exhibit 6, you have a copy of that there. That is the agreement of December 4, 1941, between Mr. Hoffman and Mr. Fleming, and I call your attention to pages 2-A and 2-B, which apparently have been inserted in that exhibit, and particularly to page 2-A. I call your attention to the first half of that page. I would like to have you read that, and then I want to ask you further questions about it.

The Court: What exhibit is that?

Mr. Crouter: That is Exhibit 6, if the Court please, Petitioner's Exhibit 6, page 2-A.

Q. (By Mr. Crouter): Now, after having read that, do you recall that it apparently referred to a situation whereby Mr. Fleming had apparently had a note for \$1,000.00? You will notice from the beginning of that paragraph he may have had another one for \$1,500.00 for an account for salary for services rendered, and do you recall whether there was discussion between you and Mr. Harmon and Mr. Davidge regarding the question of paying back Mr. Fleming and how long it might take to do that? That is what that refers to, is it not?

A. Yes.

Q. Paying it in installments? [273]

(Testimony of Walter D. Douglas.)

A. That is correct.

Q. I want to ask you particularly regarding the latter part of that paragraph near the center of the page, after the figure \$1,500.00, right near the center: "It being expressly agreed that for the purpose of determining whether or not such company is in a position to pay such dividends, the salaries paid to officers and/or employees of such company who during such year have been stockholders of such company, shall be taken to aggregate not more than \$12,000.00." Tell us what that figure shows and how that happened to be inserted in there?

A. Frankly, I don't know. I can't recall how it was based at the time the agreement was written.

Q. I appreciate this was between Mr. Hoffman and Mr. Fleming, but I did want to know whether you knew of that and agreed to it and what it was based on.

A. We knew of the agreement, because this was one of a series of agreements which we had gone over.

Q. And do you recall that \$12,000.00 limitation in there?

A. Frankly, right at now I am a little confused as to—apparently that was put in. I don't know how that particular figure was arrived at.

Q. But I take it that you now do not have any independent recollection on that \$12,000.00 matter at all. [274]

A. I don't recall that specific item, no.

(Testimony of Walter D. Douglas.)

Q. I appreciate it has been a long time back and you have been in a good many other things. Do you recall having any discussion at all with Mr. Hoffman that officers' salaries should not exceed \$12,000.00 during that year at least until after Mr. Fleming was paid off? A. Well, I don't—

Mr. Milliken: Your Honor, I object to that, because that is not what this agreement says. If the witness is asked if he thinks it means that, that is something else. That is not what this agreement says.

Mr. Crouter: I am not basing these questions entirely on this agreement, if the Court please.

Q. (By Mr. Crouter): On direct examination you testified to certain conversations as to arrangements you had with him, sir, and I just wanted to know whether this was a part of those conversations, whether there was any conversation with Mr. Hoffman about the \$12,000.00 limitation on officers' salaries.

A. I don't recall, as I say, this particular figure. I recall the general subject matter which led up to this portion of the agreement, but I can't tell you now whether I specifically remember the \$12,000.00 figure or not.

Q. I appreciate that the agreement is between Mr. Hoffman and Mr. Fleming. [275]

A. Yes, sir.

Q. But the situation as it is now is that you now have no independent recollection of any discussion by Mr. Hoffman or any agreement with Mr. Hoff-

(Testimony of Walter D. Douglas.)

man regarding the \$12,000.00 limitation of officers' salaries.

A. I don't recall any specific discussion of that item, no sir.

Q. I take it, then, that in view of your financial situation generally, this initial investment of \$4,000.00 was a very minor financial matter in your life, isn't that right?

A. Well, I don't know whether it is minor. I admit that it is a speculation, and there was the possibility that I entered in at the time, realizing I might never see it again.

Q. You regarded that just as a small investment or speculation on your part.

A. Relatively small, yes.

Q. Did you at any time receive any interest on any of the amounts that you advanced, Mr. Douglas?

A. Yes, I did.

Q. Do you remember whether you received any in 1942 and 1943?

A. Yes, I think there was interest paid for both of those years. [276]

Q. You did not receive anything purporting to be in the nature of a dividend on account of your contract as shown by Exhibit 7, I mean, the contract of December 9, 1941, or on account of the stock which you were to receive before it was issued in January, 1944, did you? A. No.

Q. You received nothing in the nature of dividends or payment on your agreement for the year 1943. That is correct, isn't it?

A. The only receipts were interest on the loans.